



PLANO

Professional Landmen's Association of New Orleans

NOVEMBER, 2004

www.planoweb.org

PLANO BULLETIN #034

PLANO EVENTS

- Nov. 9 **Joint Industry Luncheon**, Fairmont Hotel, New Orleans
- Nov. 15 **PLANO Wine Tasting**, Royal Sonesta Hotel
- 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 Party**, Royal Sonesta Hotel

OTHER ACTIVITIES

- Nov. 25 Thanksgiving Day - Holiday
- 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**

JOINT INDUSTRY LUNCHEON - TUESDAY, NOVEMBER 9, 2004, 11:15 A.M.

FAIRMONT HOTEL

NEW ORLEANS

SPEAKER: MICHAEL C. LYNCH

TOPIC: WHERE IS THE OIL SHORTAGE? THE ANTI-HUBBERT VIEW.

The past few years have seen a revival of arguments that resource scarcity will soon be driving world petroleum markets. Forecasters, using the Hubbert method, claim to have generated reliable estimates of the world's ultimate recoverable petroleum resources, and warn that production is near a peak. The implications of this are dramatic for the industry, as is the possibility that policymakers will respond to the warnings.

Michael C. Lynch, President of Strategic Energy and Economic Research, is a research affiliate at the Massachusetts Institute of Technology's Center for International Studies. Mr. Lynch takes a more optimistic view in the discussion of World Reserves. He challenges the notion that global petroleum reserves are the main constraint, and argues that the principal danger is that of market volatility brought about by governments' interference in world oil markets.

For luncheon reservations, please call Margo Cameron at 593-7560.

MESSAGE FROM THE PLANO PRESIDENT 2004-2005



We're getting into the thick of the entertainment and socializing season, so it seems appropriate to spend some time looking ahead to upcoming events.

First and foremost will be the hurricane-delayed PLANO Seminar and Icebreaker Party now scheduled for Thursday, October 28th at the Royal Sonesta Hotel. At last count, all guest lecturers have been able to re-schedule, so if you still need "points" for this year, this is a great chance to beat the traditional year-end crunch. Check the PLANO website for more information on the seminar.

Please note that there will be no monthly meeting in November. We'll be joining the other industry professional associations for a group luncheon at the Fairmont Hotel at 11:30am on Tuesday, November 9th. The Guest Speaker will be Michael Lynch with his presentation. "Where is the Oil Shortage?". Lynch takes the positive side of the long-running argument about whether or not the world is running out of oil, so it should be interesting.

We're also in the final stages of arranging the Wine Tasting to be held in November. Last year's Wine Tasting proved to be a great event, and we hope to do just as well this year. Information will be coming out soon, so stay tuned.

Before I close, I'd like to make a quick mention of the great time we had at the PLANO Golf Tournament. Though heavy rains from the weekend threatened us, the Carter Plantation Course drained and dried quickly, so we were able to play through with only minimal delay. I'd like to thank Bill Johnson and Rob Schroeder for their usual excellent job in organizing the outing.

And last but not least, we'll say so long to Bill Gordon who will have left for Malaysia by the time you read this. I told Bill to form a Miri Chapter of AAPL and then we could meet for an inter-chapter mixer in say, Maui.

Well, that should do it for this month. I look forward to seeing all of you at the next function you can attend.

A Happy and Safe Thanksgiving to all of you.

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



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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

Be Happy with What You Have
While Working for What You Want

Submitted by
Margo Cameron, PLANO Administrator &
PLANO Newsletter Editor

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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 the December, 2004, Newsletter.

AAPL DIRECTOR'S REPORT

I recently attended the American Association of Professional Landmen's ("AAPL") Quarterly Board of Directors' Meeting held in Chicago, IL on September 19, 2004. Our own Harold J. Anderson presided over his first Board of Directors' Meeting and did a fantastic job. For those of you who attended PLANO's September 13, 2004, membership luncheon, you were able to hear Harold explain firsthand how AAPL is constantly working to improve the lives of all Landmen. The benefits of being an AAPL member far exceed the annual costs of membership. I encourage any PLANO member who is not a member of AAPL to join. You will immediately start to recognize the benefits of membership such as the monthly *Landman and Landman II* publications, first class educational events, group health insurance (Geocare) and industry lobbying efforts on behalf of all Landmen. Call me now at 985-674-4443 to join.

Major topics discussed at the September 19, 2004, Board of Directors' meeting are listed as follows:

1. Attendance at the Austin, Texas, Annual Meeting was 753 persons.
2. Current AAPL membership stands at 6,793 vs. 6,747 this time last year. AAPL is still

waiting on approximately 700 members renewing their membership. Charles E. Arnold, former PLANO President, is the AAPL Membership Chairman.

3. The AAPL Gulf Coast Institute will be held on November 4th and 5th, 2004, in Lafayette, LA. You may visit the AAPL website (www.landman.org) to download an application.
4. NAPE will be held on January 26th and 27th, 2005, at the Charles R. Brown Convention Center in Houston, TX. Over 500 booths have already been sold. NAPE has become one of the industry's premier events, and is operated by Landmen.
5. One of Harold Anderson's new initiatives is the New Generation Landman designed to recruit and mentor younger Landmen. If your company has a "New Generation Landman" who wishes to get involved in AAPL, please have him/her contact Harold or me.

*Respectfully submitted,
Nm. David Briggs
AAPL Regional Director*



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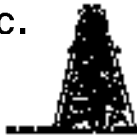
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LOUISIANA LEGAL UPDATE

OIL & GAS LAW DEVELOPMENTS

CASES OF INTEREST

Presented by Gordon T. Whitman
The Onebane Law Firm, Lafayette, Louisiana
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Notice of Lawsuit Must be Filed in Mortgage Records to Affect Third Persons.

The donor of immovable property (real estate) filed suit to revoke the donation for ingratitude. With the petition, the donor filed a notice of the lawsuit ("**Notice of Lis Pendens**") in the Conveyance Records of the parish where the property is located. During the pendency of the case, the donee sold the property to a third person. The purchaser, who was made a defendant by the donor, defended on the basis that he bought free and clear of the lawsuit since the Notice of Lis Pendens was not filed in the Mortgage Records. The trial court agreed and dismissed the suit. The Court of Appeal for the First Circuit affirmed. *Williams v. Williams*, No. 2003-CA-2089, 2004 WL 1418401 (La. App. 1st Cir. La. decided June 25, 2004).

Louisiana by statute provides that the proper recording of a Notice of Lis Pendens makes the outcome of the suit binding on third persons. LSA-C.C.P. art. 3752. Generally speaking, Louisiana requires that matters involving title to immovable property be filed in the conveyance records. See LSA-R.S. 9: 2721. However, in this instance the statute specifically requires it be filed in the mortgage records, and so filing in the conveyance records was held to be ineffective.

The above case is a reminder that procedural statutes must be strictly followed or be prepared to suffer the (disastrous) consequences. From a logical perspective, it makes perfect sense to file such a notice in the conveyance records; unfortunately, the statute provides otherwise. From the facts recited in the opinion, it is not clear who, if anyone, told the clerk where to file it. In any event, the case was dismissed without the donor presenting her case.

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

Court Holds that Living Children of Original Heirs of Decedent Entitled to be Placed in Possession Without Opening Successions for Original Heirs.

Upon the death of a person (**the "Decedent"**), a Succession was filed. Prior to a judgment of possession being rendered, the original heirs (**the "Heirs"**), of the

Decedent also died, and their children (**the "Children"**) filed to be recognized as the heirs of the Decedent. The trial court

refused and held that he could only

render a judgment recognizing the Heirs. The Children would then have to open successions for the Heirs. The Court of Appeal for the Second Circuit reversed, and held that the trial court should have recognized the Children in the Succession of the Decedent. *In re Succession of Parker*, Nos. 38920-CA, 38921-CA, 2004 WL 2102114 (La. App. 2nd Cir. La. decided September 22, 2004).

The trial court reasoned that the Children were not heirs of the Decedent at the time of his death. Accordingly, he felt that he was required by law to place the Heirs in possession, and that the Children must file separate successions for each of the Heirs that had died. The Court of Appeal rejected this and held that until a Judgment of Possession is rendered in a succession that an heir does not have "seizin in fact," although an heir may have "seizin of right." In other words, an heir may be entitled to inherit, but his interest in particular property comes with being placed in possession by a judgment. Accordingly, if an heir dies before that time, that heir's children may be substituted in the Judgment of Possession without the need to incur the expense of filing additional successions.

It cited the case of Succession of Martin, 234 La. 566, 100 So.2d 509 (1958), as authority for this proposition.

The above decision is a practical common sense approach to the above problem. However, it is not yet final. Should this decision change upon further appeal, we will report on same.

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

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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:
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LOUISIANA LEGAL UPDATE OIL & GAS LAW DEVELOPMENTS CASES OF INTEREST

Presented by Jonathan A. Hunter
Liskow & Lewis, New Orleans, LA
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Fifth Circuit Finds MMS Deep Water Royalty Relief Regulations Unlawful

Over the last thirty years, Louisiana federal courts have rendered a series of landmark decisions applying the Outer Continental Shelf Lands Act ("OCSLA"). Examples include *Conoco v. Watt* (E.D. La. 1982), restraining MMS from applying its civil penalty regulations; *Union Texas Petroleum v. PLT Engineering* (5th Cir. 1990), concerning the applicability of the law of the adjacent state to federal offshore leases; and *Diamond Shamrock v. Hodel* (5th Cir. 1988), holding that federal lessees did not owe royalties on the billions of dollars in take-or-pay monies paid by pipelines to producers. Last month, the Fifth Circuit added another decision to this body of OCSLA case law, ruling in *Santa Fe Snyder Corp. v. Norton* that MMS's deep water royalty relief regulations (30 CFR § 260.112-117) unlawfully deprive federal lessees of royalty relief mandated by Congress in the 1995 Deep Water Royalty Relief Act, which amended the OCSLA. See [http://www.ca5.uscourts.gov/opinions/](http://www.ca5.uscourts.gov/opinions/pub/03/03-30648-CVO.wpd.pdf)

[pub/03/03-30648-CVO.wpd.pdf](http://www.ca5.uscourts.gov/opinions/pub/03/03-30648-CVO.wpd.pdf).

In the Royalty Relief Act, Congress authorized royalty relief of up to 87.5 MMBOE for two categories of deep water leases: Pre-Act Leases, issued at lease sales held prior to November, 1995; and New Leases, granted at lease sales held during the period 1996-2000. The Act made royalty relief for Pre-Act Leases dependent on the lessee's demonstration to Interior that production would be "economic" with royalty relief, but would not be "economic" without royalty relief. Moreover, the Act limits royalty relief for Pre-Act Leases to royalties that would be owed on "new production" – i.e., production from a lease that had not produced prior to November 1995. For royalty relief on production from New Leases, however, Congress did not require the lessee to satisfy any economic criteria, it gave Interior no discretion to exercise in awarding royalty relief, and it did not impose a "new production requirement" as it had for Pre-Act Leases. Rather, the only statutory prerequisites for royalty relief for New Leases are water depth, location in the Gulf of Mexico, and date of

issuance of the lease. At issue in *Santa Fe Snyder* was the entitlement of the owners of a New Lease affecting Mississippi Canyon Block 110 to royalty relief. The New

Lease in question had been issued effective August 1, 1997, pursuant to Lease Sale 166.

After the lessees drilled a successful well in Mississippi Canyon Block 110, the MMS assigned the lease to a "field" that had produced prior to November 1995. Under regulations that MMS adopted purportedly to implement the Royalty Relief Act, this "field designation" deprived the lessees of royalty relief. This was because MMS's regulations imposed a "new production requirement" as a pre-condition to royalty relief from New Leases – i.e., under MMS's regulations, an owner of a New Lease would not be entitled to royalty relief without proving that the lease was producing from a field that had not produced prior to November 1995. The lessees filed suit to appeal MMS's field designation and denial of royalty relief, raising two challenges to the regulations on which the agency based its decision: first, the lessees asserted that, by making royalty relief for New Leases dependent on the satisfaction of a "new production requirement," MMS had unlawfully expanded a statutory pre-condition to royalty relief that Congress had expressly limited to Pre-Act Leases; second, the lessees asserted that the regulations unlawfully allocated royalty relief for New Leases among all leases in a "field," when

Congress intended that each New Lease would be entitled to the full statutory complement of royalty relief. Both the district court and the Fifth Circuit held in favor of the lessees and ruled that the agency's royalty relief regulations are unlawful.

The Fifth Circuit found that Congress unambiguously intended that royalty relief for New Leases would be automatic, as long as the leases were issued in the qualified areas and water depths of the Gulf of Mexico during lease sales held in the years 1996-2000. Accordingly, the court found that MMS's regulatory imposition of a "new production requirement" for New Leases, which Congress had imposed as a pre-condition to royalty relief only for Pre-Act Leases, violated Congressional intent. In addition, the court found that MMS violated the Royalty Relief Act by adopting regulations which allo-

About the Author

Jonathan A. Hunter: Is a shareholder in the New Orleans office of Liskow & Lewis, where he practices in the firm's oil and gas section as well as the firm's energy litigation section. He receives his bachelor's degree from Yale University in 1983 and his law degree from Louisiana State University Law Center in 1987, where he was Editor-in-Chief of the Louisiana Law Review and a member of the Order of the Coif. He is an Adjunct Lecturer in Law at Tulane Law School, where he teaches Federal Offshore Oil and Gas Law. He represents producers in a wide variety of matters relating to federal offshore properties, including acquisitions and divestitures of oil and gas properties, representing clients before the MMS on qualification and assignment approval issues, handling administrative and judicial appeals of MMS orders to pay royalties and negotiating settlements with the MMS of royalty disputes. He also has extensive experience in energy-related litigation in state and federal courts.



cate royalty relief on a "field" basis, instead of allowing each New Lease in a field to receive a full statutory volume of royalty relief.

The Fifth Circuit's decision rests on a bedrock legal principle: that Congress, not Interior, makes the law. Santa Fe Snyder v. Norton thus joins the well-established

body of case law holding that Interior is constrained by the statutory limits on its authority. Companies owning interests in New Leases should determine how this decision impacts their royalty accounting to the federal government.

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PLANO SCHOLARSHIPS

Ted K. Jacobs, Director Energy Management Program, the University of Oklahoma, was not able to travel to New Orleans earlier this year to receive PLANO's donation of \$2,500 for the Scholarship Program at this fine university. PLANO's check was mailed to the university and disbursements made to the students qualifying for a scholarship. The photograph below shows the formal presentation of PLANO's "check" to Ted.



PLANO SCHOLARSHIPS

Make your reservations early for

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GOLF TALK

The PLANO Fall Golf Tournament was held on Monday, October 11th at Carter Plantation in Springfield, Louisiana. Tropical Storm Matthew threatened to postpone the tournament, but blue skies and perfect weather greeted 128 players on the day of the tournament. PLANO's first trip to Carter Plantation was a tremendous success and the new course received great reviews from the players.

A special thanks to all of the generous Sponsors who ensured the success of our event, namely:

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The tournament winners were:

1ST PLACE

Bill Daigle, Tod Hensarling,
Charles Kana, Barry Greer

2nd PLACE

Joey Landry, David Metz
Chris Baynas, Rusty Morris

3rd PLACE

Heath Suire, Kane Heinen
Kevin Donahue, Brad Broekstra

LONG DRIVE

#13 Glen Maxwell

CLOSEST TO HOLE

#3 Gordon Cain
#5 Jim Hunt
#12 Tony Smith
#17 Jimmy Thomas

A warm round of applause is due not only to Bill Johnson and Rob Schroeder for setting up this event and obtaining the prizes, but also to Linda Morgan of Harold J. Anderson, Inc. who devotes a great deal of time administratively from issuing letters seeking sponsorships to typing the myriad of documents needed by the Organizing Committee members.

Thank you, thank you, thank you one and all for a magnificent job!

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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