



PLANO

Professional Landmen's Association of New Orleans

SEPTEMBER 2004

www.planoweb.org

PLANO BULLETIN #032

PLANO EVENTS

- Sept 13 **PLANO** Luncheon –
Muriel's Jackson Square
- Sept 16 **PLANO** Seminar & Icebreaker
Royal Sonesta Hotel
- Oct 11 **PLANO** Fall Golf Tournament
Carter Plantation, Springfield, LA
- Oct 18 **PLANO** Luncheon
Andrea's Restaurant, Metairie, LA
- Nov 8 **PLANO** Luncheon
Royal Sonesta Hotel, Bienville Suite
- Dec 9 **PLANO** Christmas Social
The Napoleon House
- Dec 14 **PLANO** Luncheon
Galatoire's Restaurant

OTHER ACTIVITIES

- Sept 27 HAPL Annual Golf Tournament
Kingwood & Deerwood Country Clubs
- Oct 14 HAPL Annual Executive Night, Hyatt
- Oct. 31 Halloween
- Nov. 25 Thanksgiving Day - Holiday
- Dec. 24 Christmas Eve
- Dec. 25 Christmas Day - Holiday
- Dec. 31 New Year's Eve

PLANO LUNCHEON
MONDAY, SEPTEMBER 13, 2004, 11:30 A.M.
MURIEL'S JACKSON SQUARE
801 CHARTRES AT ST. ANN STREET
NEW ORLEANS, LA
SPEAKER: HAROLD J. ANDERSON, AAPL PRESIDENT

Harold J. Anderson, a lifelong resident of St. Bernard Parish, Louisiana is married to Jo Ann P. Anderson. They have five children and seven grandchildren. He is a graduate of Chalmette High School, and received a Bachelor of Arts Degree from Southeastern Louisiana University, and a Master's Degree from Loyola University.

Harold began his professional career with Texaco in New Orleans, and worked in the Land Department for eleven years. He became an Independent Professional Landman in 1975, and has continued in that capacity to the present date. Currently, Harold operates five companies - Harold J. Anderson, Inc., Southern Title & Abstract Co., Inc., Anderson Environmental Services, Inc., A. D. Ventures, Inc. and Kare-Sue Energy, L.L.C.

Over the years, Harold has achieved such professional accomplishments as AAPL (American Association of Professional Landmen) Landman of the Year Award, PLANO (Professional Landmen's Association of New Orleans) Landman of the Year Award, and most recently, the Joint Industry Association Meritorious Award. He served as the the 2003/2004 First Vice President of AAPL, comprised of over 7,000 members, and is currently the AAPL President.



MESSAGE FROM THE PLANO PRESIDENT 2004-2005



September will bring an upturn to our activities with our luncheon at Muriel's on the 13th. This luncheon will be the celebration of PLANO's Fiftieth Anniversary and many of our former Presidents will be in attendance. We are fortunate to be able to have PLANO's former President and current AAPL President, Harold Anderson, speak to us at this luncheon. We appreciate Harold's making time available in, what is no doubt, an extremely busy schedule these days.

September 16th is the date for our PLANO Seminar and Icebreaker at the Royal Sonesta Hotel, Bienville Suite and atrium. Jan Van Loon has done a great job in setting up the Seminar, and Margo Cameron The Icebreaker. My hat is off to them for a great job! These are great opportunities to update ourselves and renew acquaintances.

This brings me to a bit of personal news that I need to impart to all of you. After working in the Land business here in New Orleans for twenty-two years and working with deepwater GOM matters for the last eighteen years, it is with a great deal of anticipation that I have taken advantage of an opportunity to work for Shell in the Far East. I informed the Board of this change at our August meeting, and I greatly appreciate the support shown by the Board and all my friends in PLANO for this move.

According to the PLANO By-Laws, the Vice President will take on the duties of President until the September Board meeting, at which time a permanent President will be elected. I kept Larry Beron, our Vice President, informed as the situation developed. Having known Larry for practically my entire career in the oil & gas business, I whole-heartedly support his confirmation by the Board as President. His enthusiasm and energy will be a boost to our organization. I must, however, naturally leave this for the Board to decide at the September 9th meeting.

I realize this has caught many folks off-guard but the opportunity arose soon after Frank Barber passed on the baton to me at our June meeting. This is a chance for me to gain experience in a new realm and a very different environment. I look forward to staying in touch and keeping all my friends here at PLANO apprised of my progress.

Good luck to everyone.



William A. ("Bill") Gordon, PLANO President



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NOTE: AN UPDATE OF THIS LISTING WILL BE GIVEN IN THE OCTOBER, 2004, NEWSLETTER

PLANO AUXILIARY

Summer holidays have drawn to a close, and with the start of another school year, a call came into PLANO Auxiliary to assist the Care Center with school supplies for children in sheltered housing. The PLANO Board of Directors immediately authorized the release of funds to Jo Ann Anderson, PLANO Auxiliary President, to do as she has done on numerous occasions in the past and proceed with the purchase of supplies for those in need. The picture below shows Jo Ann Anderson and Anne D. Bailey of ChevronTexaco, a member of the PLANO Board, with the children who were delighted to receive new school bags and supplies.



*School days, School days . . .
We are ready for the big day!*

Thank you, Jo Ann and Anne. Both of you did a terrific job in making certain the children received their brand new school supplies.

PLANO NEW MEMBERS

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THOUGHT FOR THE DAY

Take Charge of Your Attitude.
Don't Let Someone Else Choose It for You.

*Submitted by the
PLANO Newsletter Editor*



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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

Court Holds Drainage Claim for Pre-Unitization Production is Not Barred as a Collateral Attack upon an Order from Louisiana Commissioner of Conservation.

An oil company (the "Company") drilled a successful well on Tract A located in Louisiana. Three months after the well (the "Well") commenced to produce, the Company initiated unitization proceedings, which ultimately resulted in the establishing of a conservation unit (the "Unit") pursuant to an Order (the "Order") from the Commissioner of Conservation. Tract B was included within the confines of the Unit, and the Company proposed to pay royalty to them and to the other unit tracts from effective date of the Unit as set out in the Order. The owners of Tract B (the "Plaintiffs"), an adjacent tract also leased (the "Lease") to the Company, demanded payment of royalties from date of first production. The company refused and Plaintiffs then filed suit against the Company. The Plaintiffs urged that the Company had a duty under the Lease to protect them from drainage and that the failure to initiate unitization proceedings earlier was a breach of that obligation entitling them to be paid from date of first production as damages. The Company filed a Motion to Dismiss on the basis that the suit was a "collateral attack" upon the Order. The district court rejected the defense and held that the drainage claim was not a collateral attack upon the Order. *Eagle Lake Estates, L.L.C. v. Cabot Oil and Gas Corporation*, No. Civ. A. 04-169, 2004 WL 1801333 (E.D. La. decided August 11, 2004).

The facts as set out in the opinion recite that after the Well was completed as a producer that the Plaintiffs made numerous requests for information on the Well. The Plaintiffs alleged that these requests were ignored and that the company delayed initiating unitization until it obtained leases from other nearby tracts that were

subsequently included within the Unit. It is uncontested that Louisiana's law of capture would, absent a contract providing to the contrary, provide that Plaintiffs were not entitled to any portion of the pre-unitization production. Their claim is that the Company breached its drainage obligations under the Lease by delaying the filing of the unitization proceedings (which had the effect of postponing the effective date of the Unit and the Order).

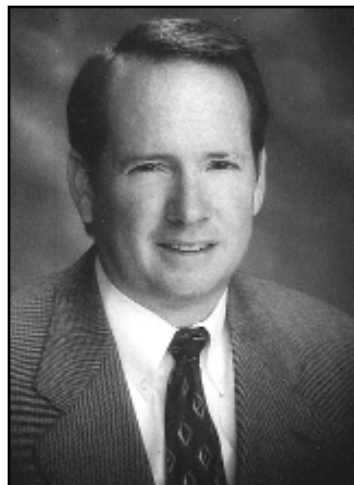
Initially, the Court discussed La. R.S. 30:12 which provides that an order of the Commissioner of Conservation may only be set aside by direct action against the Commissioner. The Court noted that this rule (the "collateral attack" rule) has been construed broadly by the Fifth Circuit in *Trahan v. Superior Oil Co.*, 700 F.2d 1004 (5th Cir. 1983), and *Pierce v. Goldking Properties*, 396 F.2d 528 (5th Cir. 1981). In *Trahan*, the claim was made that the defendant had failed to properly represent plaintiffs in a proceeding before the Office of Conservation (basically asking for the same relief as if the Commissioner had ruled in that party's favor); this claim was considered a collateral attack. In *Pierce*, the claim was that the lessee had breached its contractual obligations by failing to request an earlier effective date of unitization. This, too, was considered a collateral attack.

The Company's defense was that the Plaintiffs were complaining about the effective date of the Unit, and that under *Pierce*, this complaint was a collateral attack upon the Commissioner's Order. The Court rejected the collateral attack defense and held that the effective date of the Order was not really at issue. The Commissioner could not have provided for an effective date as of the date of first production; his rules provide that the earliest date that can be given is the date of the actual hearing. According

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



to the Court, the real issue is the date that unitization proceedings were commenced, and an allegation that they were not filed timely did not constitute a collateral attack.

It is important to remember that this decision was not on the merits; the Court's inquiry was limited to the affirmative defense urged by the Company that Plaintiff's claim was really a collateral attack upon an order of the Commissioner of Conservation. Accordingly, the opinion is strictly concerned with evaluating the merits of this sole defense. However, the possibility that an operator could be responsible for paying royalties to the lessors of non-drill site tracts for production obtained prior to the effective date of uniti-

zation is troubling.

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

Copies of the above statute can be obtained upon request to the writer at (337) 266-1232 (FAX), or e-mail to whitmang@onebane.com.

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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 as 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 FALL GOLF TOURNAMENT

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Entry fee also includes continental breakfast, survival cart lunch and prizes.

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Enclosed is my entry fee check, made payable to PLANO, in the amount of \$_____.

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