



PLANO

Professional Landmen's Association of New Orleans

MARCH, 2004

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PLANO BULLETIN #026

PLANO EVENTS

- Mar. 8 PLANO Luncheon - Royal Sonesta Hotel
- Mar. 17 PLANO OCS Sale 190 Breakfast - Sheraton New Orleans Hotel
- Mar. 19 PLANO Day at the Fairgrounds
- Apr. 5 PLANO Luncheon - Royal Sonesta Hotel
- Apr. 23 PLANO Spring Garden De'Lights Reception N.O. Botanical Garden, Pavillion of the Two Sisters
- May 10 PLANO Luncheon - Muriel's Jackson Square

OTHER ACTIVITIES

- Mar. 17 OCS Sale 190 - Central GOM, Sheraton New Orleans Hotel
- Apr. 1-2 LSU Mineral Law Institute, Baton Rouge, LA
- Apr. 6-7 Gulf Coast Energy Marketplace Fairmont Hotel, New Orleans
- Apr. 14-16 AAPLCPL Review, Royal Sonesta Hotel, New Orleans
- Apr. 17 AAPLCPL Review Exam, Royal Sonesta Hotel, New Orleans, LA

PLANO LUNCHEON

ROYAL SONESTA HOTEL, BIENVILLE SUITE

MONDAY, MARCH 8, 2004, 11:30 A.M.

Larry Benedetto is currently Vice President of Equity Research for Howard Weil Incorporated, a position that he has held since October, 1996. Howard Weil Incorporated is an energy investment banking firm with equity research, corporate finance, institutional sales, and trading efforts devoted exclusively to the energy industry. Its equity research covers 120 companies through eight analyses. The firm is one of the top institutional traders of energy stocks.

Larry began his career as a landman with Chevron USA in 1977. In 1979 he became Vice President of Land and Legal for Signal Petroleum. He joined McMoRan in 1980 and worked both onshore and offshore for the company through 1991. In 1991, he became a part-

ner in CLK Company, a firm that provided exclusive consulting services for McMoRan. he remained there through 1995.

Larry holds a B.A. from the University of New Orleans and a J.D. from Louisiana State University.

Larry's topic at this luncheon - **Commodity Prices and Their Effect on Drilling Activity** -

will give you an insight into 2004 commodity price forecasts on drilling budgets.



MESSAGE FROM THE PLANO PRESIDENT 2003-2004



In February, we enjoyed a full month of PLANO activities. All who attended PLANO night at the cabaret Le Chat Noir were both politically enlightened and entertained, a feat not often equaled even in a state notorious for its politics. Thanks to Larry Beron for coordinating this enjoyable event.

In conjunction with Executive Night, PLANO provided a fine (and free to members) educational seminar. Many thanks to the presenter's, Aimee Hebert, Rick Davis, Marty Babin and Tony Marino. We also appreciate the efforts of Vice President, Jan van Loon, Chair, Education Committee for his organization of the seminar.

Following our educational/political theme, we were honored to host a spectacular Executive Night featuring our newly elected Governor of Louisiana, the Honorable Kathleen Babineaux Blanco. Governor Blanco provided an insightful preview of her term and how it will relate to the oil and gas industry. Even the weather cooperated for an enjoyable event culminating with the sponsor party at the Royal Sonesta Hotel. A special thanks to Margo Cameron for all of her tireless work on our pre-eminent event.

At PLANO's monthly luncheon at the Royal Sonesta Hotel on March 8th, Larry Benedetto will present his view on "Commodity Prices and Their Effect on Drilling Activity."

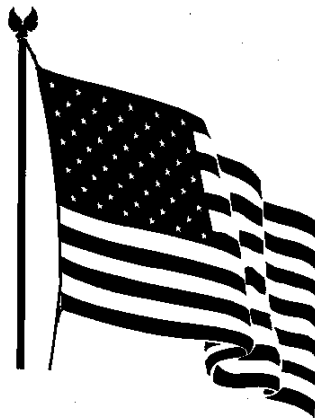
On March 19, come try your luck at PLANO's Day at the Races at the New Orleans Fairgrounds. A good time is sure to be had by all, and you may even go home a winner.

Mark the date, April 23rd, for our Annual Spring Garden Party to benefit the botanical gardens at New Orleans City Park. This year's event is not to be missed.

Stay tuned for more events in the Spring.



Frank D. Barber, III, PLANO President



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Photographer for photo taking at PLANO events on an as-needed basis. Call Margo Cameron, PLANO Administrator, 504-593-7560, or e-mail to margo_cameron@dom.com.

THOUGHT FOR THE DAY

*Submitted by the
PLANO Newsletter Editor*
*Learn to listen.
Opportunity sometimes knocks very softly.*



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BUSINESS NEWS

Earlier this month, it was announced that Glenn A. Kleinert will succeed Richard Adkerson as Chief Executive of McMoRan Exploration Co. Richard Adkerson and James R. "Jim Bob" Moffett will remain as Co-Chairmen. According to a statement in the Money Section of The Times-Picayune on Wednesday, February 4, 2004, it was stated....."...McMoRan will be managed through an office of the chairman consisting of Moffett, Adkerson and Kleinert, the company reported. Moffett will continue to focus on exploration activities and business strategy, including one of the company's key growth areas: the company's efforts to develop a \$500 million liquefied natural gas terminal at Main Pass in the Gulf of Mexico."

According to Peter Ricchiutti, Assistant Dean of Tulane University's Freeman School of Business, that project, along with several discoveries of natural gas on the Gulf's Continental Shelf, has sparked investor interest in what appeared to be a slumbering independent company. The management shift, said Ricchiutti, makes a further statement that McMoRan is far from out of the game.....they're taking the kind of steps you do when you're really planning to be around.....".

Glenn is widely-known and respected by many, many people in the oil and gas industry. Our heartiest congratulations are passed on to him for continued success in his new position.



www.ou.edu/business/em



45th OU Energy Management Awards Banquet Set for April 16, 2004

The Energy Management Program in the Michael F. Price College of Business at the University of Oklahoma will hold its 45th annual Spring Awards banquet on Friday, April 16th from 6-9 p.m. at the Oklahoma City Petroleum Club. Guest speaker for the event will be Mr. Aubrey McClendon, CEO of Chesapeake Energy Corporation. This banquet recognizes the academic achievements of Energy Management students for the past academic year. All alumni and supporters of the program are cordially invited to attend.

For more information or if you would like an invitation mailed to you, please contact Carrie Jones at (405) 325-6193 or e-mail her at carriejones25@ou.edu

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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 Contractor Who Performed Services Off Well Site and Services at Well Site Entitled to Lien Only as to Services Performed at Well Site.

A contractor ("**McDermott**") entered into an agreement ("**Prime Agreement**") with a company ("**Murphy**") to "design, engineer, construct, and install an offshore drilling and production facility" (the "**OCS Facility**"). McDermott, in turn, entered into a contract (the "**BSA**") with another company ("**Bay**") to actually perform some of the services required by the Prime Agreement. Bay constructed (the "**Construction**") the deck of the offshore facility at an onshore yard in Texas and then installed (the "**Installation**") the deck at the OCS Facility located on the Outer Continental Shelf (the "**OCS**") adjacent to the Louisiana Coast. A controversy arose between Bay and McDermott concerning payment for the work done and Bay filed an oil and gas lien under Louisiana law against McDermott for both the Construction and the Installation. McDermott filed suit in federal district court for a Declaratory Judgment that Bay was not entitled to lien status for the services performed and for other related relief. The District Court held that Bay was entitled to file a lien for the Installation, only, and granted McDermott's motion for summary judgment to the extent of the Construction. *J. Ray McDermott, Inc. v. Berry Contracting, L.P. d/b/a Bay, Ltd.*, 2004 WL 224583 (E.D. La. decided February 3, 2004).

Louisiana law grants a contractor of services for the drilling, completing, testing, producing, reworking or abandoning a well is entitled to lien status. See the Louisiana Oil, Gas, and Water Well Liens Act

("**LOWLA**"), La. R.S. 9:4861, et seq. The well in this instance was located on the OCS adjacent to the State of Louisiana;

LOWLA has been held to be applicable to such wells. See *Union Texas Petroleum Corp. v. PLT Engineering, Inc.*, 895 F.2d 1043 (5th Cir. 1990). Suit to enforce the Lien must be filed within a year of the filing of the Lien, and a Notice of Lis Pendens must be filed in the conveyance records to put third persons on notice that the suit has been timely filed. Bay filed a Lien Affidavit (the "**Lien**") in the conveyance records of Plaquemines Parish, Louisiana, for over \$24.4 million dollars. Of this total, \$24.3 million dollars represented the Construction, and \$112,000 represented the Installation.

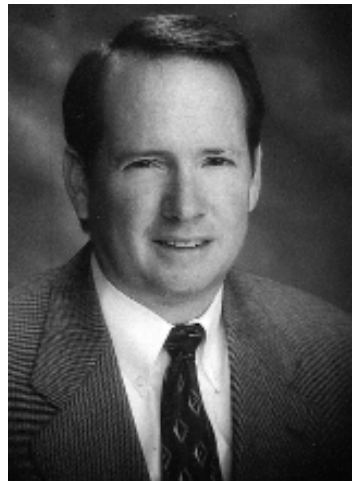
Bay did not file suit to enforce its Lien; the BSA and the Prime Agreement contained provisions requiring the submission by the parties to arbitration of certain contractual issues. It also did not file a Notice of Lis Pendens. McDermott responded by filing the instant action that among other things requested an injunction preventing this dispute from being submitted to arbitration, and an order from the court that the Lien be cancelled since Bay did not file a Notice of Lis Pendens. The court found that LOWLA did not contemplate that the parties would file for arbitration of lien disputes and so did not require that the lien claimant file a Notice of Lis Pendens in the event of arbitration. The court noted that this could be a problem for third persons who did not receive notice of the arbitration, but that Murphy (the Lease and well owner) had received personal notice of the arbitration.

Next, McDermott argued that the Prime Agreement and the BSA both required that McDermott and Bay waive its right to file a

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



Lien for work done under same. The court analyzed the contract language involved and held that it simply provided that Murphy could withhold payment until all potential liens were waived or released. The court cited the case of *Union Texas Petroleum Corp. v. PLT Engineering, Inc.*, above, dealing with a similar issue.

Finally, McDermott argued that any lien rights would be limited to those performed at the well site, that is, the Installation. The lien rights of a contractor are set forth in Sections 4862 as follows:

A. *The following persons have a privilege over the property described in R.S. 9: 4863 to secure the following obligations incurred in operations:*

- (1) *A contractor for the price of his contract for operations.*
- (2) *A contractor for the price of his contract for providing services or facilities to persons performing labor or services on a well site located in the waters of the state.*

(Emphasis added)

Bay argued that its lien rights should cover both the Construction and the Installation despite the fact that the Construction took place in McDermott's yard in Nueces County, Texas. It maintained that since it was a subcontractor of McDermott, it was not necessary that it perform all of its services on a well site as long as it was providing services to a contractor who was performing labor or services on a well site. The court rejected this interpretation and held that for a contractor or a subcontractor to enjoy lien status, the labor or services involved had to be done on a well site.

Finally, Bay argued that it was entitled to lien status as a seller of the Construction to McDermott and/or Murphy under Section 4862 (A) (6). The court quickly rejected this argument by holding that Bay was clearly a contractor, not a seller, and cited the Fifth Circuit's decision in *Nilson Indus., Inc. v. A ica America, Inc.*, 185 F.3d 492 (5th Cir. 1999). In

that decision, the Fifth Circuit examined the distinction between sellers and contractors and held that if the party involved engaged "in any process to incorporate the materials in the operation," he was a contractor and not a seller. Bay described its work in this instance as follows:

project management, liaison with the detailed engineering design office, construction engineering, receipt of tagged items, receipt of the engineering equipment, procurement of bulk materials, fabrication, installation and precommissioning.

Based upon the above recitals by Bay, the court rejected the claim that it was a seller of the Construction.

The end result of the above is that the court only recognized Bay's lien rights to the services performed on the well site, that is, only \$112,000 dollars out of the \$24.4 million dollars claimed. As to this portion, it recognized McDermott's payment of \$62,000, leaving a balance of \$50,000.

This case is a reminder that lien rights for a contractor do not include all of the contractor's claims against the owner of a well or the Lease located thereon. In this instance, they were limited to the relatively minimal services of hooking up the facility.

The above case is not final as of yet. In the event the holding of this case is changed upon further appeal, we will advise in a future article.

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

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PLANO NEWSLETTER

The PLANO Board of Directors will go online with the PLANO Newsletter next month in order to save publication and reproduction costs that can be passed on to benefit the membership. Dues Notices issued contain an insert asking members if they wish to receive the Newsletter by U.S. Mail, by e-mail, or by downloading the newsletter from the PLANO Website (www.planoweb.org). Please respond promptly to this request.

PLANO DUES 2004

PLANO Dues Notices have been issued to membership, and remainders are now being issued to those who have not yet cleared this obligation. The Dues Notices returned with the dues payment should indicate the method by which receipt of the PLANO Newsletter is desired. If no indication is given, the newsletter will be sent each month by e-mail.

IN MEMORIAM

James W. Wideman, CPL, passed away in Houston, Texas, on February 3, 2004. Born March 21, 1923, in Paris, Texas, Jim served in WWII from 1941-1945 in the U.S. Navy aboard the USS Ralph Talbot DD 390. Afterwards, he graduated from Southern Methodist University and went to work for H.L. Hunt at Penrod Drilling Co. In 1951 he began a 34 year career as a landman for Stanolind O&G (later Amoco). He served as Chief Landman in Chicago, Illinois, from 1981-1983. Jim retired in Houston, Texas, in 1984 and continued to work as a consulting landman until age 75.

Jim had many friends and mentored numerous landmen, for whom he cared deeply. He had a long association with AAPL, HAPL, MAPL, PLANO, and as a NAPE volunteer. He was also a long-time member of the John Calvin Presbyterian Church in Metairie, LA.

He is survived by his loving wife of 59 years, Betty Moore Wideman, daughter and son-in-law, Lisa W. and Michael R. Jones, Baton Rouge, LA, grandchildren Katie and Kyle Jones, and numerous nieces and nephews.

Services were held in Houston on February 6, 2004, with a separate service and internment the next day in Dallas, Texas, at Restland Memorial Park.

For those caring to do so, contributions in Jim's memory may be made to the Landman Scholarship Trust, c/o AAPL, 4100 Fossil Creek Boulevard, Fort Worth, TX 76137; American Heart Association or to the charity of your choice.

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