



PLANO

Professional Landmen's Association of New Orleans

DECEMBER, 2003

www.planoweb.org

PLANO BULLETIN #023

PLANO EVENTS

- Dec. 9 PLANO Luncheon, Galatoire's Restaurant
SOLD OUT
- Dec. 10 PLANO Christmas Social, Omni Royal Orleans
- Dec. 10 PLANO Lease Sale Breakfast
- Jan. 12 PLANO Luncheon – Muriel's Jackson Square
- Feb. 19 PLANO Seminar (1/2 day) – N.O. Hilton Riverside
- Feb. 19 PLANO Executive Night – N.O. Hilton Riverside
- Feb. 19 PLANO Sponsor Party – Royal Sonesta Hotel

OTHER ACTIVITIES

- Dec. 10 MMS OCS Lease Sale 189 Eastern GOM
- Feb. 4 NAPE, Houston, TX
- Feb. 5 NAPE, Houston, TX
- Feb. 6 NAPE, Houston, TX



***Merry Christmas
and
Happy New Year***

PLANO LUNCHEON – *Monday*, JANUARY 12, 2004
MURIEL'S JACKSON SQUARE
801 CHARTRES STREET, NEW ORLEANS, LA
SPEAKER : DAVID B. MILLER, EnCap INVESTMENTS L.P.

Mr. Miller is Senior Managing Director and co-founder of EnCap Investments L.P., an investment manager and leading provider of private equity capital to the independent sector of the oil and gas industry. Since its inception in 1988, the firm has assembled ten institutional oil and gas funds and currently manages over \$1.5 billion of capital provided by insurance companies, pension funds, university endowments and commercial and investment banks.

From 1988 to 1996, Mr. Miller served as President of PMC Reserve Acquisition Company, a partnership jointly owned by EnCap and Pitts Energy Group. Prior to the establishment of EnCap, Mr. Miller served as Co-Chief Executive Officer of MAZE Exploration Inc., a Denver-based oil and gas company he co-founded in 1981. Mr. Miller began his professional career with Republic National Bank of Dallas, ultimately serving as Vice President and Manager of the bank's

wholly-owned subsidiary, Republic Energy Finance Corporation.

Mr. Miller is a graduate of Southern Methodist University, having received his Bachelor and Master's Degrees in Business Administration in 1972 and 1973 respectively. He is a member of the Executive Board of the Edwin L. Cox School of Business at SMU and was named a Distinguished Alumnus of the Cox School in 2000.

Mr. Miller currently serves on the board of directors of Denbury Resources Inc., Petrohawk Energy, LLC, Sawtooth Energy Partners, LLC, and Ovation Energy, LP. He is also a member of the Independent Petroleum Association of America, the Texas Independent Producers and Royalty Owners Association and the Dallas Wildcat Committee.

Mr. Miller will discuss, "Capital Availability to Small to Mid-Cap Independents, with Specific Emphasis on Private Equity."

MESSAGE FROM THE PLANO PRESIDENT 2003-2004



As we head into the holidays, PLANO is winding the year up with an enjoyable set of activities. We recently hosted our first inaugural wine tasting at Delachaise. Larry Beron ensured good food and grape for the participants at this well attended and fun evening. We look forward to more interesting social events in the coming months. Our Christmas luncheon on December 9th at Galatoire's is a sellout and features former PLANO President, Mitch Ackal.

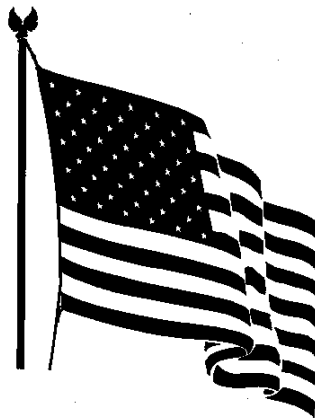
Please bring wrapped presents to this meeting, or to my office, designated boy or girl with appropriate age. We will give the residents of the CARE facility another holiday gift party before Christmas. On December 10th our holiday party will be held at the Royal Orleans. PLANO Coordinator, Margo Cameron, is working to ensure a beautiful event.

For the upcoming year, we will begin 2004 with our monthly luncheon returning to Muriel's. While there is no February meeting, we will again host Executive Night and an half-day seminar. Remember all sponsors will enjoy a sponsor party on the premier balcony of Royal Sonesta Hotel on Executive Night.

In the spring, PLANO will host the AAPL CPL review and its annual Garden Party benefiting City Park Botanical Gardens. We also will be awarding deserving students college scholarships to promote their studies in Land Management. I encourage all to contribute to this worthy endeavor.

Wishing all a Merry Christmas, Happy Holidays and a prosperous New Year.

Frank D. Barber, III, PLANO President



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Membership applications from the individuals named above were reviewed and approved by the PLANO Board of Directors’ at their meeting on Thursday, November 6, 2003. The PLANO Board welcomes all of them to the organization, and, at the same time, urges all of them to become a member of the American Association of Professional Landmen (“AAPL”), you are asked to contact Wm. David Briggs at 985-674-4443 for full membership information, or call AAPL direct at 817-847-7700.

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VOLUNTEER NEEDED

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*

*Never let the odds keep you from pursuing what
you know in your heart you were meant to do.*




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FROM MURIEL'S JACKSON SQUARE KITCHEN TO YOURS

Pecan Drum Crunch

6 oz. Drum Fillet
6 oz. Pecan Crust:
equal parts pecans and bread crumbs
4 oz. Pecan Relish
1-1/2 oz. Lemon Butter Sauce
Creole Seasoning
Seasoned Flour

Pecan Relish

2 oz. Pecans
1 oz. Onions, diced
1/2 oz. Bell Pepper, diced
1/2 oz. Celery, diced
1/2 teaspoon Garlic, chopped
1 oz. Claw Crabmeat, Shells Removed, or
Crawfish Tails
1/2 teaspoon Creole Seasoning
1 oz. Butter

Lemon Butter

1/2 cup White Wine
1/2 cup Champagne Vinegar
1 Shallot, diced fine

Lemon Butter (continued)

1 oz. Lemon Juice
Salt
White Pepper
1/4 lb. Butter (unsalted), cubed
1/8 cup Heavy Cream

Process

Pecan Relish:

Place butter in sauté pan over medium heat. When melted, add onions, peppers, celery and garlic. Sauté for one (1) minute. Add pecans and Creole seasoning and sauté for 1 minute more, stirring frequently.

Lemon Butter:

Place white wine, vinegar and shallot in a small pot and reduce to almost all liquid is evaporated. Add cream and reduce until thick. Lower heat to low and slowly whick in butter, one cube at a time. Remove from heat and add lemon juice. Season with salt and white pepper.

Enjoy.....

PLANO AND "DRESS FOR SUCCESS"

PLANO will team up with *Dress for Success* to help low-income women make tailored transitions into worthwhile jobs. PLANO and PLANO Auxiliary chose to organize a Ladies' Suite Drive. *Dress for Success New Orleans* has certain requirements for Ladies' Suits: Professional business suits (pants or skirts), blouses and shells, blazers and jackets, professional shoes, purses without decoration. All clothes should be clean and on hangers. All donations should be basic colors, black, navy, grey, brown or taupe. Participants are referred to *Dress for Success* from over 72 local government agencies, social organizations and faith based organizations. What better time than Thanksgiving to get involved and make a difference in someone's life. Contact Jo Ann Anderson at 276-5858, Ext. 214 or E-mail at JAnderson@hjainc.com.

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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

Mineral Lessor Does Not Have to Join in Suit Against Gas Purchaser for Breach of Contract to be Entitled to Share in Recovery.

A company (*the "Lessee"*) obtained certain mineral leases from certain mineral owners (*the "Lessors"*), and proceeded to drill a number of successful gas wells. Another company (*the "Purchaser"*) entered into a Gas Purchase Contract (*the "Contract"*) with the Lessee whereby the Purchaser agreed to take the gas produced and pay for same. The Purchaser defaulted and the Lessee filed suit. The Trial Court awarded damages covering both the Lessee's share but also the Lessors' royalty share in same. The Purchaser appealed on the basis that the Lessors had not been made parties to the lawsuit. The Court of Appeal for the 2nd Circuit affirmed on the basis that the damages were "amounts realized" as defined in the underlying mineral lease and that the Lessee was obligated to pay the Lessors their royalty share of same. *Bradford v. Onshore Pipeline Const. Co.*, 853 So.2d 756 (La. App. 2d Cir. 2003).

The facts of the case are somewhat complicated especially as to whether the Purchaser breached the Contract. The Purchaser unsuccessfully argued that it was entitled to opt out of the Contract under the "Unprofitability Gas Clause" due to the low levels of gas production. Apparently, the Contract also allowed either party to opt out (*the "Opt Out Provision"*) of the Contract upon giving thirty (30) days notice to the other side; however, the Purchaser did not utilize this provision until four (4) years later.

On appeal, the Purchaser argued that the Court could not award damages on

100% of production since it would have included the lessors' royalty and the Lessors had not joined in the lawsuit. The

Court rejected this argument based upon the Louisiana Supreme Court's decision in *Frey v. Amoco Production Company*, 603 So.2d 166 (La. 1992). That case had held that the mineral lessor was entitled to its royalty share of any settlement of such a dispute based upon the "amounts realized" language of the standard oil and gas lease.

In any event, the case is yet another reminder that under Louisiana law that the mineral lessor is entitled to its royalty share of any settlement of such a dispute. Additionally, it points out the problem in focusing on certain provisions of an agreement and not considering all of its terms and provisions. With the Opt Out Provision contained in the Contract, there seemed to be no need to resort to the Unprofitability Gas Clause.

Owner of Record Title Loses Ownership Due to Thirty Years Adverse Possession.

Secret Cove, L.L.C. ("*Secret Cove*") acquired a tract of land by deed from the owner of record. The tract of land encompassed over 200 acres with approximately two acres ("*Disputed Tract*") being possessed by a third person without any record title claim to same ("*Thomas*"). Secret Cove made demand upon Thomas to cease his use of the Disputed Tract. When the latter party refused, Secret Cove filed a petitory action declaring it to be the owner of the Disputed Tract and seeking possession. Thomas answered the suit claiming he owned the Disputed Tract due to adverse possession sufficient to acquire a prescriptive title to same. The Trial Court held that for Thomas, and found

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



that he had acquired ownership based upon his adverse possession. The Louisiana Court of Appeal for the First Circuit affirmed. *Secret Cove, L.L.C. v. Thomas*, 2003 WL 22515752 (La. App. 3d Cir. decided November 7, 2003).

Louisiana recognizes the right of a possessor without any legal title whatsoever to acquire ownership of immovable property (real estate). To do this, the possessor must have adversely possessed the property for a period of thirty (30) years; however, his ownership is limited to that portion of the property he has actually possessed, either "inch by inch" or within enclosures. As will be demonstrated below, the Court found that Thomas had possessed the Disputed Tract within enclosures, which has been held to any natural or artificial boundary.

The Disputed Tract is described in the opinion as "wild, undeveloped, rural property" with "the entire area being virtually uninhabited" except for Thomas (who had record title to a tract adjacent to the Disputed Tract) and "is inaccessible except by boat or by a road through the Thomas' property." The actions which Thomas undertook over the years is described in the opinion as "clearing the underbrush, maintaining the road alongside the levee, and developing the campground area." The Court specifically noted that aerial photos revealed extensive clearing, structures on the Disputed Tract, and a number of boat docks.

The above was found to be sufficient acts of adverse possession. The question before the Court was really the extent of the property possessed. Secret Cove argued that Thomas had not possessed "within enclosures." The Disputed Tract was bounded on one side by a canal (which all sides agreed was a boundary), and on another side by a Section Line (in the Township). While Secret

Cove argued a Section Line was not a visible boundary, the Court found that the U.S. Army Corps of Engineers had left monuments on the ground which clearly delineated the Section Line, and found this to be such a boundary. The Court found the other two boundaries, to-wit, (1) a natural drainage feature which drained into the canal, and (2) the two-foot change in elevation from the high land to the swamp bordering the Disputed Tract.

The above case is a cautionary note. The fact that a person has record title to a tract of land does not mean that he owns it. If the tract is important to your operations, a Landman should be sent to investigate the history of the use and possession of the tract. Possession is a question of fact and as illustrated by the above case, the nature of the use required depends upon the nature of the land and where it is located.

The above cases do not appear to be final as of yet. In the event the holding of either of these cases are changed upon further appeal, we will advise in a future article.

Copies of the above cases 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 ***Christmas Social***



Wednesday, December 10, 2003
6:00 - 9:00 p.m.

OMNI ROYAL ORLEANS HOTEL
Royal Garden Terrace

621 St. Louis Street * New Orleans, LA 70130
(corner Royal and St. Louis Streets)

*An invitation is extended to you and your guest to join
PLANO in celebrating the Holiday Season*

R.S.V.P. by December 3, 2003
to Margo Cameron (593-7560), or
E-mail: margo_cameron@dom.com

Tickets \$20.00 each Cocktails/Buffer
Checks to be made payable to PLANO, and mailed
to P.O. Box 51123, New Orleans, LA 70151-1123
Dress: Dressy Casual

A LOOK BACK IN TIME

December 12, 1800
Washington, D.C. established as capital of
United States.

December 29, 1848
Gas lights first installed in White House
(Polk's administration).

REMINDER

OCS LEASE SALE 189 EGOM
WEDNESDAY, DECEMBER 10, 2003
7:15 A.M. - 9:00 A.M.

PLANO will have a breakfast
in the Bienville Suite, Royal Sonesta Hotel

FREE to all attendees at the Lease Sale.

2003 PLANO SPONSORS

The Professional Landmen's Association of New Orleans would like to thank the following parties for their participation in PLANO's sponsorship program.

The dedication and support given by these sponsors of PLANO is greatly appreciated.

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