



PLANO

Professional Landmen's Association of New Orleans

July, 2003

www.planoweb.org

PLANO BULLETIN #018

PLANO EVENTS

Sept. 8 PLANO Luncheon, Muriel's Jackson Square
Oct. 16 PLANO Icebreaker, Hotel Monteleone
Oct. 17 Joint AAPL/PLANO Luncheon,
Hotel Monteleone
Oct. 20 PLANO Fall Golf Outing, Money Hill,
Abita Springs, LA
Nov. 10 PLANO/API Joint Luncheon,
Dec. 9 PLANO Luncheon, Galatoire's Restaurant
Dec. 10 PLANO Christmas Social, Omni Royal Orleans

OTHER ACTIVITIES

Jul. 29 Gulf Coast Prospect Expo 2003, Lafayette, LA
Jul. 30 Gulf Coast Prospect Expo 2003, Lafayette, LA
Aug. 20 OCS Lease Sale 187 Western GOM
Sept. 29 HAPL Annual Golf Tournament
Kingwood & Deerwood C.C.
Oct. 16 HAPL Annual Executive Night, Hyatt
Oct. 17 AAPL/PLANO Gulf Coast Land Institute,
New Orleans, LA

JUNE LUNCHEON MONDAY, JUNE 16, 2003, 11:30 A.M. ROYAL SONESTA HOTEL, BIENVILLE SUITE NEW ORLEANS, LA

A large crowd attended this luncheon to bid farewell to the PLANO Board members finalizing their term in office on June 30th, and to welcome the new Board members taking their place, effective July 1, 2003. Heavy rain that day did not dampen the spirits of those assembled.

Members were able to greet one another and exchange news. One sad note crept into the meeting when it was realized that in the very near future our ExxonMobil friends will be leaving New Orleans to take up office in Houston, TX. We will miss them greatly, especially at the monthly PLANO events.



The incoming PLANO Board shown in the picture to the left are:

Front Row, L. to R.:
Jo Ann Anderson,
Nm. David Briggs,
Frank D. Barber, III
(PLANO President),
Anne D. Bailey

Back Row, L. to R.:
Jan van Loon,
Scott A. O'Connor,
Carl F. Southern,
Nm. A ("Bill") Gordon,
David V. Dufour,
Larry Beron,
and J. Patrick Morris, Jr.

Missing from picture:
Andrew M. Adams
and William B. Raley.

PLANO Board 2003-2004

MESSAGE FROM THE PLANO PRESIDENT 2002-2003



It is amazing how fast time goes by when you are having fun! Just a year ago I had the distinct honor and privilege to begin my tenure as President of PLANO. I have thoroughly enjoyed serving as President and wish to thank the members for the opportunity. Now, I pass the torch to the new President, Frank Barber.

As I reflect on the past twelve months, I want to take the opportunity to thank PLANO's officers and board members for the successes we enjoyed this year. Frank Barber, as Vice President, did a wonderful job scheduling very informative and interesting speakers for the monthly membership luncheons as well as for Executive Night. Jo Ann Anderson served as Secretary, with distinction. And, special thanks to P.J. Goodwine for serving as Treasurer for a two-year term. He did an outstanding job. Also, it would be remiss of me were I not to thank Rob Schroeder and Bill Johnson for their continuing effort to organize and plan two great golf tournaments each year.

PLANO golf tournaments, along with the other distinctive events of the year, i.e. Fall Ice Breaker, Christmas Social and Executive Night, are what set PLANO apart from other landmen associations. Events of that quality, together with first class educational seminars, are able to be staged due in large measure to the PLANO Sponsorship Program which this past year exceeded all expectations. The PLANO Sponsorship Program was most ably spearheaded by Harold Anderson and Margo Cameron.

During my tenure in office, the PLANO Scholarship Program was set up. \$5,000 was raised and issued to students at ULL Lafayette, LA. PLANO is now soliciting funds next year so if your company is interested in supporting this program, please contact Frank Barber at Taylor Energy Company.

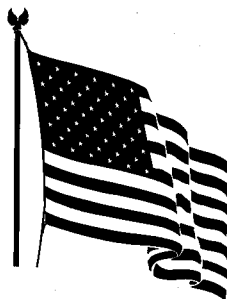
One major community undertaking that gained major recognition for PLANO was the opening of the PLANO Demonstration Garden at the New Orleans Botanical Garden. The demonstration garden has been several years in the making. I am delighted to report that it was formally dedicated on April 17, 2003. It is a beautiful garden, truly a legacy from PLANO to the City of New Orleans.

I also want to take this opportunity to thank the outgoing Officers and Board Members, Keith Howell, Kate Boudreaux-Smith, P.J. Goodwine and Mitch Ackal, Immediate Past President, and Charles Arnold, AAPL Regional Director. Effective July 1, 2003, the outgoing Officers and Board Members have been replaced by some equally capable people, namely, Frank Barber, President, Jan van Loon, Vice President, Jo Ann Anderson, Secretary, and Patrick Morris, Treasurer. In addition, other new Board Members to take office July 1st are: Anne Bailey, David Dufour, William A. ("Bill") Gordon, and William Raley. I am confident the new officers and board of directors will lead PLANO to new heights in the coming year.

I would also like to congratulate Jan van Loon and Keith Couvillion for winning AAPL awards at the AAPL convention in Denver, CO a few days ago. Jan won a Special Award for his contribution to educational events. Keith won the Outstanding Committee Chairman Award for his leadership on the AAPL OCS Committee. PLANO won two awards this year. Next year we will win more. HAPL wins way too many anyway! Congratulations, Jan and Keith.

Having said all of that, I now bid you adieu, and again express my gratitude to the members of PLANO for the opportunity to serve you as President. Have a fun and safe summer. I look forward to seeing you in the fall at the various PLANO functions.

David Briggs, PLANO President



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THOUGHT FOR THE DAY

*Submitted by the
PLANO Newsletter Editor*

We should seize every opportunity
to give encouragement.
Encouragement is oxygen to the soul.

SALUTE TO THE ARMED SERVICES SATURDAY, MAY 17, 2003, 6:05 P.M.

On this date, the New Orleans Zephyrs teamed up with the community for the purchase of tickets for military families to enjoy a Zephyrs’ game and be part of the salute to those who have defended our country. PLANO purchased a \$500 red sponsorship, which included scoreboard recognition, ten complimentary tickets, a team autographed ball and two patriotic Zephyrs tee shirts. All of us at PLANO were proud to be given the opportunity to salute our military in this fashion. The ball and tee shirts were donated to a deserving military family.

NEW MEMBERS

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Charles E. ArnoldExxon-Mobil Production Co.

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Carl F. SouthernExxonMobil Production Company
Warren P. MiguezTaylor Energy Company

Spring Garden De'Lights

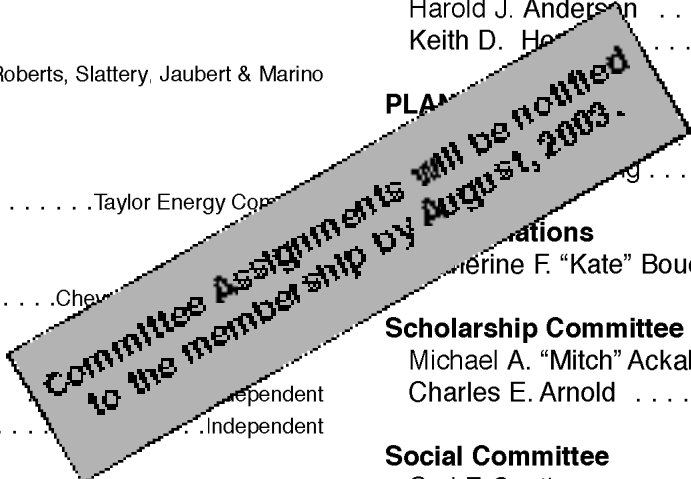
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 Cell: (918) 640-8977



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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 Upholds Constitutionality of Timber Sale 80% Rule

Last year, we advised you of a Louisiana First circuit Court of Appeal decision that held that the 80% Rule applicable to sales of merchantable timber was unconstitutional. The Louisiana Supreme Court has reversed that decision and held the statute is constitutional. *Allain v. Martco Partnership*, 2003 La. LEXIS 1616 (La. decided May 23, 2003).

The facts are the same as we previously reported to you and are reprinted as follows:

Owners of an undivided 82.5% of certain land sold their interest in the timber to a third party purchaser. The owner of the other undivided 17.5% interest rejected the terms offered by the purchaser and refused to sell its undivided ownership interest. The purchaser then proceeded to cut the timber as authorized by La. R.S. 3:4278.2 allowing the harvesting of timber when at least 80% in interest had consented and non-consenting owners had been offered a contract on substantially the same terms and conditions. The non-consenting owners' shares of the proceeds were placed into the registry of the court as provided by this statute. The non-consenting owners then filed suit against the purchaser (and did not join the majority co-owner) to annul the sale urging that among other things the state statute was unconstitutional. The district court rejected the claims of plaintiffs, which judgment was appealed to the First Circuit Court of Appeal. The appellate court reversed and held that the statute authorizing the sale of timber by the consent of less than all of the co-owners was unconstitutional, and awarded damages to plaintiffs. *Allain v. Martco Partnership*, No. 2001-CA-0614 (La. App. 1st

Cir. decided April 17, 2002).

As noted above, the Louisiana Supreme Court reversed the First Circuit Court of Appeal.

The Supreme Court noted that the court of appeal's decision was grounded upon the notion that the statute allowed "quick taking" of the timber (as in an expropriation) by private parties for a private purpose and violated the **due process** rights of the minority owners. Since there was no state action involved, the Supreme Court had no difficulty in reversing the court of appeal and holding the statute to be constitutional. The Court did review the statute and expressly held that the statute was not a quick taking type of statute and that the notice provided to the minority owners was adequate and gave them ample opportunity to partake in the sale.

The appellate decision was of concern to the oil and gas industry since La. R.S. 3:4278.2 is very similar to the "80% Rule" for oil and gas operations which is found in La. 31:164, 166, and 175. The concern was that if the decision was upheld, then a similar attack might be made upon the 80% Rule for oil and gas operations.

While there are certain differences between the statutes that might have offered protection to the oil and gas industry, the Supreme Court's decision is welcome news.

It should be noted that the reported decision was not yet final, and that the time for rehearing had not yet passed. If this decision is changed upon rehearing, we will advise you of that in future issues.

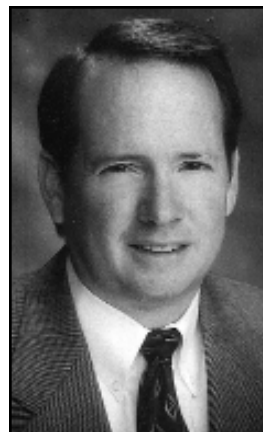
Court of Appeals Upholds Partition of Separate Mineral Servitudes Covering a Single Tract

A certain tract was owned in indivision by various descendants (and their successors and assigns) of the origi-

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



nal landowner. In 1998, all of the owners sold the land to a third party in two separate acts of sale in which the minerals were reserved, thus creating two separate mineral servitudes covering the entirety of the land. The owners of 8/9ths of the minerals (**the "Majority"**) filed a suit to Partition the minerals by licitation (**the "Partition"**), alleging that the parties had failed to **agree** on the joint management of the minerals. The owner of the remaining 1/9th (**the "Minority"**) objected to the Partition on the grounds that the mineral servitudes owned by the Majority and the Minority were separate servitudes (**the "Servitudes"**) and that as such they were not owners in common. The trial court acknowledged the Servitudes were separate, but allowed the Partition to proceed on the basis that they were "based on a commonly held right to explore, for, develop, and reduce to possession the minerals of the property in their entirety." The Louisiana Third Circuit Court of Appeal affirmed this decision in *Lacassane Company, Inc. v. Jardin Minerals Co.*, 2003 La. App. LEXIS 1618 (La. App. 3rd Cir. May 29, 2003).

At first blush, the argument that a partition would not be available for the owners of the minerals underlying a certain tract of land seems unreasonable. The rationale behind the right to partition (*as noted in this Court's opinion*) is that "it would be against public policy for property to be taken out of commerce and rendered unusable because of fragmented ownership." However, the Court had to deal with a number of arguments against allowing the Partition to proceed, before ultimately allowing the Partition to proceed.

Initially, the Minority pointed out that the Servitudes were **not** a single mineral servitude. The sale of the land in 1998 was actually accomplished in two separate Acts of Sale, with the Majority appearing in the first Act of Sale, and the Minority appearing in the second Act of Sale. These two sales were passed on different days, and therefor had different prescriptive periods. Using the above as a starting point, the Minority then cited Louisiana Mineral Code Article 169 (La. R.S. 31:169), as

authority for the proposition that the Majority and the Minority were not co-owners:

Co-ownership does not exist between the owner of a mineral right and the owners of the land subject to the right or between the owners of separate mineral rights.

The Majority argued that all of the parties inherited a joint right to explore and reduce minerals to possession and ownership which is functionally the nature of a mineral servitude, and that the parties could not destroy this common right by their later unilateral actions.

The Court acknowledged that the Louisiana Supreme Court had held that a suit to partition mineral rights is not allowed between the owner of the land (*and an undivided interest in the minerals*) and the owner of a mineral servitude covering the land. *Steele v. Denning*, 456 So.2d 992 (La. 1984). However, the Court felt that the need for a "thing to be held in common" was met in the instant case.

The Court looked at the rationale for allowing a partition and examined the facts of the instant case. It noted that the parties were all co-owners at one time (*as a result of inheritance*) and specifically held that co-owners cannot affect the right to a partition of the minerals as a result of their subsequent unilateral actions in creating subsequent mineral interests.

The above case is not yet final and could be changed on rehearing or on appeal.

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

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PLANO LUNCHEON

A large crowd attended the PLANO luncheon held on Monday, June 16th, at the Royal Sonesta Hotel, to bid *au revoir* to the exiting PLANO 2000-2003 Board members and to welcome the Board members taking office, effective July 1, 2003. After partaking of an excellent lunch, presentation of awards for the year 2002-2003 began.

Frank Barber's first duty as PLANO President for the year 2003-2004 was the very pleasant task of presenting awards to deserving PLANO members for the year 2002-2003. The Company of the Year Award was presented to Schully, Roberts, Slattery, Jaubert & Marino. The photograph below shows Anthony C. ("Tony") Marino receiving the awards.



PLANO Board Members 2002-2003

Front Row, L. to R.: Jo Ann Anderson
Wm. David Briggs, Frank D. Barber, III,
Keith D. Howell

Back Row, L. to R.: Jan van Loon, Scott A. O'Connor,
Michael A. Ackal, Jr., Paul Goodwine, Carl F. Southern,
Larry P. Beron.

Missing from photograph:
Andrew M. Adams, Charles E. Arnold,
C.F. ("Kate") Boudreaux-Smith



L. to R.

Frank D. Barber, III, Tony Marino

The Landman of the Year Award was presented to Jan van Loon of Oats & Hudson, New Orleans. Jan gives freely of his time and talents to PLANO, particularly in setting up excellent educational seminars. This awards is long overdue.



Frank D. Barber, III
(Taylor Energy Company)
PLANO President 2003-2004



L. to R.

Frank D. Barber, III, Jan van Loon

PLANO LUNCHEON

David Briggs next received the Special Award for services rendered to PLANO, as well as a plaque in appreciation of his services as PLANO's President during 2002-2003. The picture below shows Frank Barber presenting the awards to David Briggs.



L. to R.: Frank D. Barber, III, Wm. David Briggs

The Betty S. Baronne Award, established July 30, 1981, is awarded to a Federal, State or Local Government Representative in an oil and gas related position, who has displayed a high degree of competence and expertise in his or her area of responsibility and a desire to aid Landmen in their efforts to work with recipient's office or agency. Greg Dugas, Geologist with the Louisiana State Mineral Board, is wellknown to land personnel as a person who goes out of his way to be of assistance to those seeking help. PLANO was proud to issue this award to him.



L. to R.: Frank D. Barber, III, Greg Dugas



L. to R.: Greg Dugas, LA State Mineral Board, and his lovely wife, Susan

Members "going off" the Board this year were each presented with a gift in appreciation of their service to PLANO. Mitch Ackal, Dominion Exploration & Production, Inc., a staunch and loyal supporter of PLANO for many years, is shown below receiving his gift from Frank Barber.



L. to R.: Mitch Ackal, Frank D. Barber, III



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