



PLANO

Professional Landmen's Association of New Orleans

MARCH, 2003

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PLANO BULLETIN #014

PLANO EVENTS

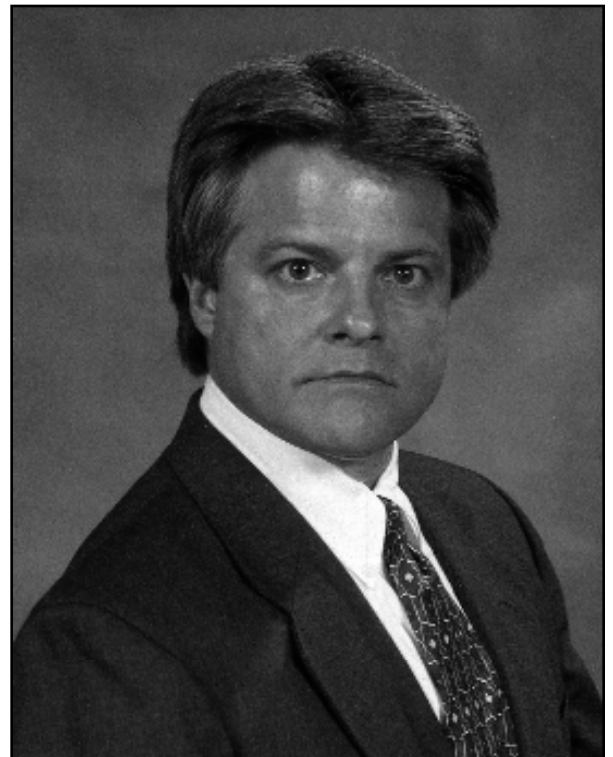
- Mar. 10 PLANO Luncheon - Hotel Monteleone
Riverview Room
- Mar. 19 PLANO Lease Sale Breakfast -
Hyatt Regency Hotel
- Mar. 27 Joint Crawfish Boil - PLANO/API/SIPES -
Jaeger's Seafood
- Apr. 15 PLANO Luncheon - City Park Botanical Garden
- Apr. 25 PLANO Baseball Seminar, Zephyrs' Field
- Apr. 25 PLANO Night at Zephyrs' Field

OTHER ACTIVITIES

- Mar. 4 **MARDI GRAS DAY - Holiday**
- Mar. 8 HAPL Spring Saturday Seminar, CMI
- Mar. 13 HAPL Annual South Texas Social,
Firehouse Saloon
- Mar. 19 OCS Lease Sale, Central GOM,
Hyatt Regency Hotel, New Orleans, LA
- Apr. 27 LAPL Charity Crawfish Boil
Acadian Village, Lafayette, LA

MARCH LUNCHEON SPEAKER LAMBERT M. LAPEROUSE Gieger, Laborde & Laperouse, LLC New Orleans, LA

Lambert Laperouse is currently the Managing Partner of Geiger, Laborde & Laperouse. He has been an oil and gas practitioner since 1979 assisting clients in negotiations and due diligence with respect to acquisitions and divestitures of assets in the Gulf coast area and in connection with preparation of title opinions for exploration and production projects affecting Louisiana and OCS properties. Lambert obtained an undergraduate degree from Louisiana State University in 1975 and a law degree from Loyola Law School in 1979. He has served as an adjunct professor of Loyola Law School since 1979 teaching Louisiana Mineral Law. Lambert is a past member of the Board of Directors of PLANO and has participated in numerous seminars conducted by PLANO, HAPL, AAPL and other oil and gas related associations. Lambert also served as an American Petroleum Institute sub-committee member to assist in the drafting of a Model Form OCS Shelf operating agreement and served as an American Association of Professional Landmen sub-committee member assisting in the drafting of a Model Form deepwater OCS operating agreement.



MESSAGE FROM THE PLANO PRESIDENT 2002-2003



In most organizations - schools, churches, businesses, and organizations such as PLANO, the difference between being ordinary and extraordinary is not a huge increment, but only a small amount - 10 percent. The 10% Principle is a book written by an old college professor of mine. In his book, Dr. Barrie Richardson makes the case that the difference between being a run-of-the-mill organization and a high-performance one is really only a small amount of extra effort, in most cases only 10 percent, hence the 10 percent principle. How often do you come across a really outstanding organization? Reflect on your own experiences in the past few days. Would you give a A+ rating to your supermarket, your kid's school, your church, bank or the place where you work? The reality is that most of us work at, or are a part of, organizations that produce average products, deliver average services or average rates of return for the investors. If we are really honest, most of us would say that most of the organizations we deal with in every day life are acceptable and satisfactory, but few are outstanding.

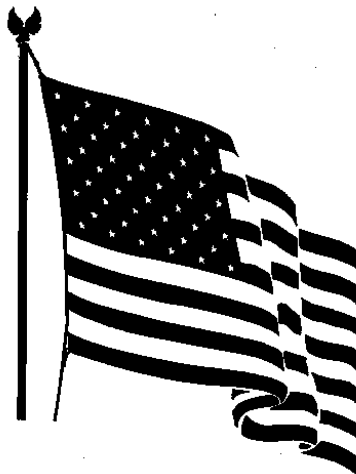
By applying the 10 percent principle to your work or other endeavors, the difference between being one of a select cadre of high performers and being average is usually only a small level of extra effort. This concept can be used as a tool to improve your individual performance and organizations in all walks of life. An individual or organization does not need to be better at everything to be outstanding or above average. He, she or the organization, only needs to be better in a few vital areas to make a difference. Those individuals and organizations who realize that high performance is within their reach by applying the 10 percent principle can also inspire those around them to achieve more.

I am proud to say I believe the 10 percent principle is at work in the PLANO organization. I am not saying this concept applies to me, but to the rank and file members of PLANO who go the extra mile to make our organization fun, unique and successful. There are many who give of their time and money and go the extra 10 percent. PLANO is fortunate to have such a giving membership. I must say the one person who certainly exemplifies the 10 percent principle in our organization is Margo Cameron. Through her tireless efforts, PLANO runs like a finely-tuned Porsche. I must give credit where credit is due. The next time you see her give her a big thank you.

Let's apply the 10 percent principle to the attendance at our next membership meeting on March 10, 2003, at the Hotel Monteleone Riverview Room, by increasing our attendance from the last meeting. Our own Lambert Laperouse is the scheduled speaker. He will discuss MMS Updates. I am sure his comments will be both educational and entertaining. Please make your luncheon reservations now by calling Margo Cameron at (504) 593-7560.

Also, if you have not purchased your Executive Night ticket, please call Margo, or any member of the Board of Directors. We have a great program planned. I am sure you will be glad you attended.

David Briggs, PLANO President



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AAPL MEMBERSHIP

PLANO urges its members who have not yet joined AAPL to consider doing so. For information, call AAPL at 1-817-847-7700, or e-mail to aapl@landman.org or AAPL Website www.landman.org.

VOLUNTEERS NEEDED

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

THOUGHT FOR THE DAY

*Submitted by the
PLANO Newsletter Editor*

It isn't hard to make a mountain out of a molehill.
Just add a little dirt.

PLANO & PLANO AUXILIARY CIVIC ENDEAVORS

The PLANO Board in 1998 voted unanimously to become involved in the raising of funds for the construction of a demonstration garden at the New Orleans Botanical Garden in City Park. This is a major undertaking. To date, over \$90,000 has been raised, leaving \$60,000 needed to complete the project.

For those of you not familiar with what is taking place at the Botanical Garden, the following extract from a recent article in *The Times-Picayune Living Section* may be of interest to you.

"I think 2003 is going to be a very exciting year," said Bob Becker, City Park's chief executive officer.

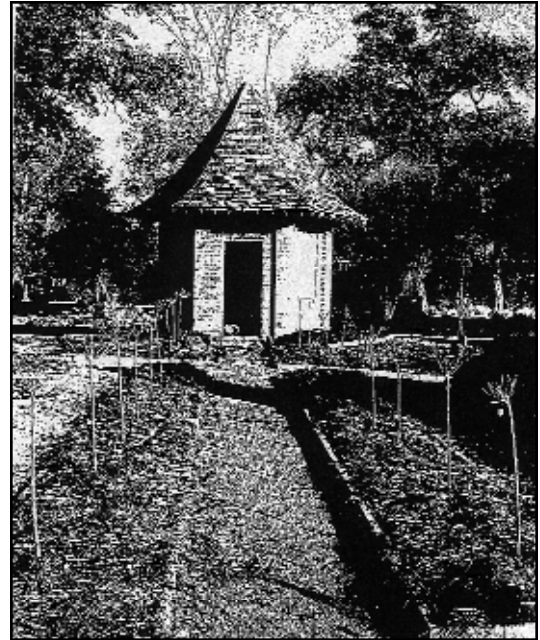
The half-acre PLANO Demonstration Garden (funded by the Professional Landmen's Association of New Orleans) will incorporate brick gazebo-like structures formerly on the golf courses. It will be used for the first time for a one-of-a-kind, hands-on historical horticultural exhibit set to open April 11, coinciding with "Jefferson's America - Napoleon's France," blockbuster-to-be show at the New Orleans Museum of Art.



PLANO Demonstration under construction
January, 2003

Curator Lake Douglas, landscape architect and garden historian, said that the exhibit will look broadly at how plants were used by Thomas Jefferson, Napoleon and his community, and people here.

Text panels and real plants will show how plants were thought of and used in different ways at the time of the Louisiana Purchase, Douglas said. He sees the exhibit as "a way to reacquaint people with how important plants were and how vital they were to the growth of the early colony."



Small Rest House in the
PLANO Demonstration Garden

And he hopes this exhibit will be the beginning of local interest in our specific environmental history.

"It's just going to open a door to this subject, and that's a real positive step," Douglas said. "It signals the educational value of the Botanical Garden, and the capacity the garden has for displaying and talking about the history of how plants are used in the community."

Botanical Garden Director Paul Soniat said the garden will include lots of fruit trees, flowers, herbs, berries and old garden roses. "It's amazing that a lot of things growing in vegetable gardens then are pretty similar to what we're growing now," he said.

The plant lists include different vegetables for the seasonal span of the exhibit. Although some heirloom vegetables may be used, Soniat said, the decision was made to use the varieties that do well here, so plants won't be ridden with fungus and bugs halfway through the exhibit, which closes in August.

Soniat said the PLANO Demonstration Garden's original plan was to show the fruits and vegetables of this region, and that the plants will stay and grow after the exhibit closes. Although Thomas Jefferson's Monticello had all types of fruit trees, including many that don't do well here such as apples, varieties recommended only by the extension service especially for this region will be used."

Ground has been broken for Yakumo Nihon

Telen - a Japanese Garden for New Orleans, a demonstration garden that has been in the planning and fund-raising stages for years. It will be the first public Japanese garden in Louisiana, and will be situated behind the new Conservatory near the PLANO Demonstration Garden.

A short walk away from the Botanical Garden, work is in progress on the five-acre Besthoff Sculpture Garden, with an anticipated opening in mid-to-late May. This promises to be an exciting garden, displaying prominent works of art. To name but a few - Virlane Tower by Kenneth Snelson, Sacrifice III by Lipchitz, Reclining Mother and Child by Henry Moore, Rain Mountain by Noguchi, Una Battaglia by Arnaldo Pomodoro, and Ruth & Naomi by Leonard Baskin.

City Park is the largest regional park in the Southeast and the most-used park in Louisiana, with 11 million visitors in 2001, according to Bob Becker. It receives no public funding, hence the need for support from the community.

The PLANO Demonstration Garden will open with the New Orleans Botanical Garden's Spring Garden Show on April 12-13, 2003. Plans are underway for the ribbon-cutting ceremony on Saturday, April 12th at 10:00 a.m. The garden will house the Plants of the Louisiana Purchase Exhibit, and lots of publicity is now being given to it.

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You can now update your listing in the PLANO Online Directory. Click on to www.planoweb.org, and then hit Directory on the left hand side of the screen. The P.L.A.N.O. Online Directory will appear on the screen. Enter your Last Name in the appropriate SEARCH box. Your listing will appear on the screen. To update your listing, hit "Click Here to Update Your P.L.A.N.O. Online Listing." Follow the prompting to add the amendment(s) to your listing, then hit Submit. The Directory is immediately updated, with details going to the PLANO Administrator.

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Court Awards \$30 Million for Failure to Comply with Reassignment Obligation

An oil company ("Amoco") subleased (*the "Sublease"*) its interest in certain oil, gas and mineral leases (*the "Leases"*). In the Sublease, Amoco reserved an overriding royalty interest in the Leases, and required the Sublessee to give advance notification (*the "Notice"*) of any intended surrender, expiration, abandonment or release of the leases. The Sublessee (*actually the successor in interest*) allowed one of the Leases to expire due to lack of production, and as to four of the other Leases, released certain acreage located outside of a producing unit. Eighteen (18) years after the expiration of the first lease and thirteen (13) years after the release of the acreage outside of the above referenced unit, Amoco filed suit alleging breach of the Sublease by failure to give the Notice and seeking damages for the breach.

The trial court found for Amoco, which judgment was appealed to the Third Circuit Court of Appeal. The appellate court affirmed and upheld the award of damages. *Amoco Production Co. v. Texaco, Inc., et al*, No. 2003-La. App.-100 (La. App. 3rd Cir. decided January 29, 2003).

The facts of this case are not entirely clear, especially with respect to the basis for the award of damages. While the following recitation of the facts is more than we usually give of a case, it is important in this instance to have an understanding of the court's decision. It appears that Amoco subleased the Leases in 1955, that the Sublessee in turn assigned the Sublease (and the Leases) to another company ("IMC") in 1976 (this assignment included hundreds of leases). The Sublease contained the following "Reassignment

Obligation":

"In the event that the Assignee should elect to surrender, let expire, abandon or lease any or all of its rights in said lease acreage, or any part

thereof, the Assignee shall notify the Assignor not less than sixty (60) days in advance of such surrender, expiration, abandonment or release, and if requested to do so by the Assignor, the Assignee immediately shall reassign such rights in said lease acreage, or such part thereof, to the Assignor."

Soon after the assignment, IMC experienced mechanical problems in the unit well maintaining one of the leases (*the "Jenkins Lease"*); the attempted repairs were unsuccessful and the Jenkins Lease was allowed to expire. A formal release was executed by IMC a year later (no explanation was given as to why Amoco was not asked to sign the release). (*The case recites that IMC took new leases on the lands formerly covered by the Jenkins Lease, but it does not state when those leases were taken and it appears that no operations were undertaken or production established until the late 1980's that would have maintained these new leases.*)

As for the remaining four Leases, the case recites that they were being maintained by production from a "Miogyp Unit." These Leases apparently did not contain a Pugh Clause restricting the effect of unit operations/production on lease maintenance to the portion contained within the unit. In 1980, the landowners filed suit against IMC (but not Amoco) alleging underpayment of royalties, and the case was settled by releasing the portion of the leased premises located outside of the unit (*the "Outside Acreage"*), and taking new leases on the Outside Acreage. The case recites that shortly

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 Land Institute.

Areas of Practice: Oil and Gas, Business



thereafter the acquisition of the new leases, "new gas deposits were discovered which generated millions of dollars in production revenue." (*The case does not give dates when the new leases were taken, nor when the new wells were drilled generating the production.*)

The case recites that an individual hired by Amoco to conduct an audit of Amoco's properties operated by outside parties brought the above to its attention. This auditor noted a division order sent out in 1989 by the operator of certain Marg-Tex units in the field. The Leases covered acreage within these units; additionally, portions of the acreage released by IMC were also included within these units. When the auditor (not knowing of the releases) questioned the failure of the division orders to give Amoco credit for these latter tracts, they were advised of the releases (and the execution of new leases to IMC).

Following the above, Amoco filed suit in 1994. At first, Amoco was seeking damages for the breach of the Sublease's requirement of Notice only for the latter four Leases. They apparently were not aware of the expiration of the Jenkins Lease. Amoco later amended its petition to add a plea for damages resulting from the Jenkins Lease.

Prescription

Initially, IMC argued that Amoco's claims had prescribed. The Jenkins lease had expired more than 18 years, and the Outside Acreage had been released more than 13 years, prior to suit being filed. While IMC stipulated that it had not given written Notice to Amoco as required by the Sublease, it argued that Amoco knew or should have discovered the Jenkins Lease expiration and the other Lease cancellations. The Court had no trouble dispatching this claim and noted that the evidence merely demonstrated that Amoco possibly could have known. The Court held that any contrary holding would mean that an oil company would be bound to canvass the public records on a continuing basis to look for cancellations that it had not been notified of.

Damages

IMC argued that Amoco's measure of damages should be the "market value of the canceled leases on the date of the breach." Since there was no production at that time, they argued that this should be limited to the "signing bonus" given to leases in that area without any consideration of the value of production later obtained. The Court rejected this and held that the proper measure of damages is "the amount necessary to place the plaintiff in the same position he would have been in had [the defendant] completely fulfilled [its obligation]."

IMC next argued that Amoco should only be entitled to its overriding royalty on the production that had been obtained had the Jenkins Lease not

been released and the other Leases not cancelled. The evidence suggested that this would have approximated \$1.2 million. Amoco countered by saying that they would have taken new leases and drilled their own wells and/or would have sought farmouts (characterized by IMC as "hypothetical farmouts"). Under this scenario, Amoco would have been entitled to the entire working interest in the new leases or their farmout share of same. Apparently, the Court agreed with Amoco and specifically found there was enough evidence that Amoco would have entered into farmouts or farmins so as to obtain a lease position in the field. The Court awarded Amoco damages in the amount of \$30 million.

As noted above, the facts set forth by the Court are not completely clear, and it is difficult to tell exactly the basis for the damage award. There is much discussion in opinion about hypothetical wells being drilled by Amoco (if they had known of expiration and releases) and achieving the identical levels of production from successful wells drilled by others, without factoring in any potential for drilling dry holes (apparently assumption adopted by Court was 100% success rate for these hypothetical wells). Without a clearer record of the Court's basis for awarding damages, it is difficult to evaluate the award.

The above notwithstanding, the case is a very good illustration of the "Reassignment Clause" and what can happen if you ignore it. This is especially true as to the Jenkins Lease. It is one thing to release a lease or portions of the leased premises without notifying the Sublessor. Presumably, the operator executing the release would notify all working interest owners and attempt to have them execute the release. (*Additionally while the Court did not discuss this issue, there is some question as to the effectiveness of a release that has not been joined in by the sublessor.*) However, when a well ceases to produce and the workover is unsuccessful, the operator might forget to notify the Sublessor and simply plug and abandon the well. The above suit points out that there is probably no prescription running unless and until the operator notifies the Sublessor in writing.

The case is not final and is still within the appellate delays. We will advise you should the outcome be reversed on appeal.

The foregoing is a synopsis of the above case, and you may wish to read it in its entirety to better evaluate its impact upon your situation.

By Gordon T. Whitman

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