



# PLANO

*Professional Landmen's Association of New Orleans*

NOVEMBER, 2002

[www.planoweb.org](http://www.planoweb.org)

PLANO BULLETIN #010

## PLANO EVENTS

- Nov. 11 PLANO Luncheon - Royal Sonesta Hotel
- Nov. 28 ***Thanksgiving Day - Holiday***
- Dec. 2 PLANO Luncheon - Andrea's
- Dec. 7 PLANO Auxiliary -  
Care Center Christmas Party
- Dec. 10 PLANO Christmas Social -  
The Napoleon House
- Dec. 25 ***Christmas Day - Holiday***
- Jan. 1 ***New Year's Day - Holiday***

## OTHER ACTIVITIES

- Nov. 7 HAPL Offshore Social,  
Museum of Natural Science
- Nov. 7 2002 Gulf Coast Land Institute, Jackson, MS
- Nov. 8 2002 Gulf Coast Land Institute, Jackson, MS
- Nov. 14 Joint Energy Industry Assoc. Lunch,  
Fairmont, N.O.
- Dec. 6 HAPL Annual Holiday Gala, Hyatt Regency
- Jan. 28 NAPE, Houston, TX
- Jan. 29 NAPE, Houston, TX
- Jan. 30 NAPE, Houston, TX

## DECEMBER LUNCHEON SPEAKER DANIEL J. ("DAN") WARREN C & C Technologies, Inc.

Dan Warren is a marine archaeologist for C & C Technologies, Inc., a hydrographic survey company based in Lafayette, LA. Dan has worked for C & C for the past four years conducting archaeological and hazard assessments for gas, oil and submarine cable surveys in the Gulf of Mexico, Asia, and Central and South America. Prior to coming to work for C & C, Dan was employed as an archaeological field technician by the Missouri Department of Transportation in Jefferson City, Missouri.

Dan has a Bachelor of Arts degree in Anthropology with a minor in History from the University of Illinois at Champaign-Urbana and a Master of Arts in Maritime History and Nautical Archaeology from East Carolina University. He has been employed as a professional archaeologist for thirteen years. In that time he has worked on nautical archaeology projects in the United States, Bermuda and Australia, as well as numerous terrestrial archaeology projects throughout the United States.



For those of you who are history buffs, "The Discovery of the German U-boat, U-166," written by Dan and Robert A. Church, gives an interesting account of how this U-boat was finally discovered, thus solving an intriguing historical mystery.

## MESSAGE FROM THE PLANO PRESIDENT 2002-2003



Despite two storms bearing down on us in little over two weeks at the start of PLANO's new year, we are off to a good start. The initial meeting in September featured Clancy Dubos as our guest speaker. Mr. Dubos presented an informative and insightful commentary on various issues shaping political events, locally and statewide. I enjoyed - and I believe everyone in attendance did - his remarks concerning former Governor Edwin Edwards and Commissioner of Insurance Jim Brown. At the time, both men had appealed the Justice Department's ruling that they report to prison and begin serving their respective prison terms. Now, as Clancy predicted, both men are in prison.

At our October, 2002 meeting, Mr. George I. Shinn, majority owner of the New Orleans Hornets, delivered an informative and exhilarating speech to PLANO members. Mr. Shinn, a self-described salesman, provided the attendees with a list of the civic and economic accomplishments the team had achieved while in Charlotte, North Carolina. His goal for New Orleans is to produce the same civic and economic impact experienced in Charlotte. Mr. Shinn concluded his remarks by sharing with the assembled members five principles that have guided his life and have led to his success as a businessman and a person, namely:

1. Attitude: Always make a point of paying attention to what the other person is saying. Learn from every experience, and don't forget to smile.
2. Fear of Mistakes: Leave your mistakes behind you and move one. If you never do anything, you will never make a mistake. Learn from your mistakes and apply the knowledge gained to future endeavors.
3. Goals: You must set goals and move towards them as you go through life. You just cannot drift along without a plan.
4. Self-Esteem: Be proud of yourself.
5. Believe in Yourself: Do not doubt that you cannot achieve what you set out to do. It may take a lot of hard work and discipline, but keep on the path and you'll do it.

***Make a note of these five principles. they are good ones to follow.***

Because of the storms that affected New Orleans, we had to reschedule the Fall Ice Breaker and Fall Seminar. Jan Van Loon and his assistant, Rosalind Rowell, and Margo Cameron did a yeoman's job of rescheduling these events. Both events were well attended. Special thanks again to Jan Van Loon for organizing such a great seminar.

Thanks to Harold Anderson and Margo Cameron, PLANO's 2003 Sponsorship Program is off and running. If your company is interested in becoming a Gold, Silver or Bronze sponsor, please contact either Harold or Margo. PLANO is committed to providing members with first class educational and social (networking) events. The sponsorship program allows the Board of Directors to plan such events at very little cost to our members as a result of the generosity of our sponsors.

I encourage everyone to attend the Christmas Social on Tuesday, December 10, 2002, at the Napoleon House, corner St. Louis and Chartres Street in the French Quarter. This event is one I look forward to every year for it is a great opportunity to socialize and partake of good food and holiday cheer. I look forward to seeing you at the event.

My Warmest Wishes to all of you for a Happy Thanksgiving.

***David Briggs, PLANO President***



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## LOUISIANA LEGAL UPDATE

presented by

Gordon T. Whitman, Attorney at Law

Onebane Law Firm

Lafayette, Louisiana

1-337-237-2660

### 5th Circuit Holds Pipeline Company has Duty to Maintain Canals Constructed Pursuant to Grant of Pipeline Servitude

The Terrebonne Parish School Board (the "Board") filed suit against certain pipeline companies (the "Companies") for failure to maintain canals on property over which servitudes had been granted for gas pipeline purposes. The District Court for the Eastern District of Louisiana had dismissed the claims of the Board on the basis of prescription, reasoning that (a) with respect to the contract claims, the servitudes did not require that the Companies maintain the canals, and (b) with respect to the tort claims, the failure to maintain is not a continuous tort, and the damages resulting from the failure of the action. The United States Court of Appeals, 5th Circuit, reversed and remanded the case to the district court. *Terrebonne Parish School Board v. Columbia Gulf Transmission Co.*, 290 F.3d 303 (5th Cir. May 10, 2002).

Two gas pipeline servitude agreements (the "Agreements") were involved. One expressly provided that the Companies had the right to lay the pipelines "in open ditches or canals not to exceed forty (40') feet in width, which may be filled in or left open at the option of Grantee." The other one expressly provided for a one hundred (100') foot wide servitude and that "Grantee shall not be required to backfill the open flotation ditch excavated during construction." Neither agreement specifically required the Companies to maintain the canals or the banks of same. While the ditches or canals did not initially exceed these limitation, over time they apparently widened to the point that the first canal was now seventh (70') feet wide and the second one was

now one hundred thirty-five (135') feet wide. The Board demanded the restoration of the lands involved.

The district court's decision was not on the merits. It simply held that the claims of the Board prescribed and granted summary judgment in favor of the Companies. The appellate court characterized the basis for the district court's decision as being in tort, whereas the 5th Circuit held that "it actually involves equal or greater questions of contract and property rights." They then analyzed the contractual issues. Initially, the court dealt with an argument that the Board waived its right to claim damages by the execution of a damage release at the time of the execution of the Agreements. The court took little time in disposing of this argument. The second contractual issue was whether the Agreements imposed any duties upon the Companies "to maintain the canal or its banks - stated differently, any duties to protect the servient estate against damage resulting from use of the servitude."

The Court found that the Companies did have a contractual duty to maintain the canal and the banks, and cited the earlier decision of the Court in *St. Martin v. Mobil Exploration & Producing U.S., Inc.*, 224 F.3d 402 (5th Cir. 2000). While noting that the language of the servitude agreement in the St. Martin case was more explicit on the duty of the pipeline company, the Court held that the key was that the Agreements do not specifically negate that duty. As an example of an agreement where that was done, the Court pointed to the decision in *Ryan v. Southern National Gas Co.*, 879 F.2d 162 (5th Cir. 1989.) Accordingly, the Court found that such a duty existed.

### 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



The Court next cited Articles 743 and 745 of the Louisiana Civil Code dealing with the obligations of the servitude owner and quoted Professor A.N. Yiannopoulos for the proposition that the owner of a predial servitude must not aggravate the condition of the servient estate, and that absent an express contractual exoneration for marsh erosion damages, that “to the extent that the damage to the servient estate was caused by the abuse of right, the damage should be compensable.”

Finally, the Court held that this duty not to aggravate the servient estate is a continuing duty. It is therefore coextensive with the life of the servitude.

This case points out the continued progression of marshland restoration cases decided by the 5th Circuit. In St. Martin, the Court determined that the servitude agreements involved required the maintenance of the canal and its banks. Here, the Court could not find such an express requirement. However, they held that unless such an agreement has an express exoneration of liability clause, the pipeline company will be responsible, and that such responsibility will exist coextensive with the life of the servitude. It remains to be seen whether in the future, the court will actually enforce such a clause to deny recovery.

### **Court Applies Federal Common Law to Determine Effect of Easement Taken Under the Strategic Petroleum Reserve Act**

In 1979, the United States acquired a Pipeline Easement (the “Pipeline” from a landowner for use in implementing the Strategic Petroleum Reserve (“SPR”); it acquired it by exercising its power of eminent domain (i.e., expropriation). Subsequently, in 1997, the U.S. assigned its rights thereunder (*while reserving the right to use the pipeline in a national emergency*) to Equilon Pipeline Company (“Equilon”). The landowner filed suit to enjoin the use of the Pipeline for a commercial purpose. The District Court for the Middle District of Louisiana dismissed the suit and the United States Court of Appeals for the 5th Circuit upheld this decision. *Canova v. Shell Pipeline Company*, 290 F.3d 753 (5th Cir. La. May 7, 2002).

The landowner argued that the Pipeline was taken by the U.S. for the use of the U.S., and that a commercial use of the Pipeline would have exceeded the scope of the taking. The Court determined that the reference of SPR in the “Declaration of Taking” (*the “Declaration”*) was a recitation of a legitimate public purpose of the taking, but that it is not a limitation on the scope of the use of the Pipeline. It further noted that the Declaration itself stated that the rights of the U.S. were assignable,

and that the statute authorizing SPR entitled the Energy Secretary “to use, lease, maintain, sell or otherwise dispose of storage and related facilities acquired pursuant to this Act.” 42 U.S.C. Section 6239(f)(1)(D)1994).

The Court in reaching its decision determined that Louisiana’s property laws would not be applied. Rather, the scope of what use was to be permitted under the Declaration was to be decided under federal common law. The court quoted from *Ellison v. Connor*, 153 F.3d 247, 256, n.3 (5th Cir. 1998): “[W]hen the government acquires property pursuant to federal law that does not specify the appropriate rule of decision, the Supreme Court has held that federal common law applies to property disputes.” The court went on to note that Louisiana could not be adopted as federal common law because the interest in the Declaration defines the taking in common law terms, an easement, rather than in civilian terms, a servitude.

The case points out that once the U.S. acquires title to property or an interest in property (in this case, an easement), that it owns the rights. Thereafter, the U.S. may deal with the interests as any other landowner. While this may not seem like a novel concept, the landowner involved was apparently taken aback when the Pipeline was assigned to Equilon pursuant to a public bid procedure.

For our purposes, the importance of the above decision is in the court’s determination that general common law property principles governed the interpretation of the property rights involved. This case acts as a reminder to Louisiana title examiners that Louisiana property law does not always apply.

### **Freeze Statute applies to Claim by State for Revenues from Lease Granted by Levee District**

The Buras Levee District (the “BLD”) received certain lands from the State of Louisiana and subsequently granted an oil, gas and mineral lease (“Lease”) to a third party. Since the execution of the Lease, these lands have become submerged by the Gulf of Mexico. Following the submersion of these lands, the State granted a separate lease to another company. the successor to the BLD, the Plaquemines Parish Government (the “PPG”) filed suit to be declared owner of the mineral rights involved and for an order requiring the operator of the well involved to pay the PPG the royalty. The operator in turn filed a concursus and placed the revenues into the registry of the court. The trial court upheld the validity of the Lease and the ownership of PPG in same. The Court of Appeal of Louisiana, 4th Circuit, upheld this decision. *Plaquemines Parish Government v. State of Louisiana*, 2002 WL 1000690 (La. App. 4th Cir.)

April 10, 2002).

The position of the State (based upon the recitation in the opinion) was that it was unconstitutional to apply La. R.S. 9: 1151 (the "Freeze Statute") to the facts of the case. The BLD was conveyed the lands at issue in 1938, and granted the Lease soon thereafter in 1938. The 1938 conveyance was supplemented by a 1954 supplemental conveyance that was apparently designed to clarify the location of the lands conveyed to the BLD. However, the 1954 supplemental conveyance also contained a provision excepting "all bayous, lagoons, lakes, and bays and beds thereof under the authority of R.S. 9: 1100." The State argued that R.S. 9: 1100 rescinded all transfers of navigable waters and their beds to any levee district. The Court held against the State on this issue and held that the legislature could not have constitutionally invalidated the 1938 Lease so long as it remained in existence.

The State next argued that at the time the suit was filed, the Freeze Statute only applied to cases where the State acquired the lands involved as a result of a number of factors not including erosion or subsidence. The Court noted that the Freeze Statute was amended by Act 963 of the 2001 Louisiana Legislature to add these items, and dismissed this claim by the State.

The opinion has not been released for publication and may be revised or withdrawn. However, it does point out the applicability of the Freeze Statute. For those landowners who have heretofore granted leases over lands that have since become submerged, they should review their individual situation very carefully before making any lease cancellation demands.

**Appellate Court Holds that Venue for Suit for the Payment of Proceeds Due Resulting from the Assignment of an Option to Acquire Mineral Leases is in the Parish where the Contract was executed, not where the Immovable Property is Located**

Party purchased an option to acquire oil, gas and mineral leases covering lands in Pointe Coupee Parish, Louisiana. It subsequently conveyed these rights to another party pursuant to a letter agreement (*the "Agreement"*) that entitled the assignor (*the "Assignor"*) to one half (1/2) of the proceeds received for any seismic options which might be negotiated by the assignee (*the "Assignee"*). The Assignee assigned its rights under the contract to another (*the "Purchaser"*) for a cash consideration but refused to remit payment. Suit was filed by the Assignor against the Assignee and the Purchaser in district court in Point Coupee Parish instead of where the Agreement was executed. The defen-

dants objected to venue, which objection was dismissed by the trial court. Writs were taken and the Louisiana First Circuit Court of Appeal reversed. *Rock Energy, Inc. v. Equity Oil Company*, 2002 WL 960027 (La. 1st Cir. May 10, 2002).

The opinion does not mention any written decision by the trial court. Presumably, the basis for this decision was that it involved claims to immovable property; venue in that case is proper in the parish where the property is located. However, as pointed out by the Court of Appeal, this case involved only a claim for money, and the plaintiff did not claim to have any interest in the immovable property involved for any interest in same. Accordingly, the Court remanded the case to the district court with instructions to transfer the case to a court of proper venue.

The Court, in so holding, distinguished the case of *CLK Company, L.L.C. v. CXY Energy, Inc.*, 710 So.2d 1098 (La. App. 4th Cir. 1998), writ denied 738 So.2d 574 (La. 1999). In that case, the plaintiff allegedly performed certain geophysical and geological services to another in exchange for receiving an overriding royalty interest in a prospect. In that case, the Court found that the overriding royalty interest was an interest in immovable property and found venue to be proper in the parish where the prospect was located. In the instant case, the Assignor was only to receive cash proceeds and not an overriding royalty or any other interest in the prospect.

The instant case has not yet been released for publication and is still subject to being withdrawn or revised. Since the trial court did not issue written reasons, it is impossible to determine what the court's basis for holding the venue to be proper in the first place. However, the Court of Appeal appears to have clearly stated the law applicable.

**Writs Granted by Louisiana Supreme Court in *Corbello v. Shell Oil Company***

The Louisiana Supreme Court has granted writs on June 14, 2002, in the case of *Corbello v. Shell Oil Company*. The grant may be found at 2002 WL 1312739 (La. 2002).

Copies of the above cases can be obtained upon request to the writer at (337) 266-1232 (FAX) or [whitmanq@onebane.com](mailto:whitmanq@onebane.com) (internet e-mail).

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**GOLF TALK**  
**PLANO Fall Golf Tournament**  
**Monday, October 21, 2002**

As in prior years, Money Hill, Abita Springs, LA was again chosen for the PLANO Fall Golf Tournament. Considering the storms which had been experienced in this area in the latter part of September and early part of October, the weather cooperated for this event, and another great day resulted.

Without the continued support of our sponsors, it would be impossible to put on a golf outing such as this. Grateful thanks and warm appreciation are due to the following sponsors:

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**Tournament winners were:**

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L. to R. Christi Cado, New Orleans Saintsations, and Jo Ann Anderson, Harold J. Anderson, Inc.



Hot Dog, anyone?  
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## THOUGHT FOR THE DAY

*Submitted by the  
PLANO Newsletter Editor*

It is good to remember that the tea kettle,  
although up to its neck in hot water,  
continues to sing.

## HAVE YOU HEARD . . .

David R. Richardson is now with the law firm of Schully, Roberts, Slattery, Jaubert & Marino, as special counsel. The firm's practice concentrates in the areas of oil and gas, banking, business and commercial law.

Mr. Richardson's practice has primarily focused on litigation, mainly oil and gas and commercial litigation for energy companies, but also includes onshore and offshore property damage, personal injury and death cases, product liability, and property litigation. In the 1980's, he handled numerous gas contract suits by oil and gas producers against various gas pipeline companies. *See, e.g. Pogo Producing Co. v. Sea Robin Pipeline Co.*, 493 So.2d 909 (La. App. 3d Cir.) *writs den.* 497 So.2d 310 (La. 1986). In addition to gas sales contract litigation, he has an extensive background in royalty cases, balancing disputes, gas processing disputes, drilling contract litigation and environmental litigation.

David R. Richardson graduated from Mississippi State University in 1964 and attended graduate school at Northwestern University on a Woodrow Wilson Foundation Fellowship. He was awarded a Master of Arts Degree in English from Northwestern in 1965 and later completed the course work for a Ph.D. in English at Duke University.

After ten years of college teaching, Mr. Richardson entered Tulane Law School in 1975 and graduated in 1978. He served as Articles Editor of the Tulane Law Review and graduated Order of the Coif. He won the American Jurisprudence and Forrester awards in constitutional law and the Rittenberg-Weinstein Award for best student writing in Tulane Law Review for 1976-1978.

Schully, Roberts, Slattery, Jaubert & Marino is located in the Energy Centre at 1100 Poydras Street, Suite 1800, New Orleans, LA.

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## CARE Center

(Crisis and Residential Emergency Center)

**CARE Center**, run by the Archdiocese of New Orleans Catholic charities, was established in March of 1984, to meet existing needs for emergency shelter for mothers and their children. This homeless situation may have been brought about by eviction, abandonment by spouse, rejection by relatives, homes destroyed by fire, or other similar circumstances.

The **Center** provides 24-hour emergency shelter and meals for up to 26 women and children (girls of any age and boys through age 11) for thirty (30) days. Women without children are given a stay of two weeks. Extensions to the usual stay are determined by an evaluation of each individual case.

**CARE Center** is a communal living situation where every resident is required to fully participate in a comprehensive program tailored to their needs. This program consists of life skills training, an individualized savings plan, participation in the physical upkeep of the facility, and involvement in the after-care program. Individual and group counseling, in addition to assistance in the search for housing, employment, and medical care, if needed, are also included in the program. Educational and prevention sessions are regularly scheduled. The Center strives to promote a more permanent solution to the residents' problems. Unity and stability are the goals for the residents whose lives have been shattered by the upheaval that homelessness brings to families.

Referrals are made by social agencies or churches, for example, the Salvation Army, the Baptist Mission, and emergency assistance programs.

Jo Ann Anderson, PLANO Auxiliary Chairman, became aware of this group at "Back to School" time, heard the **Center** was in dire need of back to school items for children housed there, and immediately set to work to provide the necessary supplies.

## 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](mailto:margo_cameron@dom.com).

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## PLANO AUXILIARY CHRISTMAS PARTY

On Saturday, December 7, 2002, at 5:30 p.m. representatives from PLANO Auxiliary will be at the CARE Center distributing Christmas gifts to the families being cared for in this facility. Gifts will be collected at PLANO's December 2nd Luncheon at Andreas. It is requested that toys and toiletries be donated. Please wrap the gifts, noting on the front of each gift whether it is for a boy, girl (with ages), or mother. Be generous. Help is needed.

Should any member wish to participate in the collection of the gifts and visit to the CARE Center with me on December 7th, please let me know by calling at (504) 276-5858 no later than Monday, December 2nd. Thank you.

*Jo Ann Anderson*

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## FROM THE PLANO NEWSLETTER EDITOR

The PLANO Directory is currently being updated. Since we are now notifying members by e-mail of meetings, luncheons, etc., it is important that we be notified without delay of all changes of address and e-mail addresses. Notification is to be submitted to margo\_cameron@dom.com, or fax to (504) 593-7671.




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L. to R. David Briggs, PLANO President;  
 George I. Shinn, New Orleans Hornets; Frank D. Barber, III  
 PLANO Luncheon, October 14th

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Thank you.

**JO ANN ANDERSON**



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