

Newsletter

LAM | LYN | PHILIP

LAM | LYN | PHILIP
Attorneys

3555 Timmons Lane, Suite 790
Houston, Texas 77027

Phone: 713 981-0900
Fax: 713 772-7085
E-mail: info@lppc.com

Results Oriented

LAM | LYN | PHILIP

Lam Lyn Philip is a Texas-based law firm. Lam Lyn Philip's core area of practice is the handling of Commercial Collection Litigation matters. The firm also specializes in Employment, Insurance Defense and Business Immigration law. Among the firm's clients are Governmental entities and private companies, including more than a third of the Fortune 100. Our representation spans across a broad range of industries, including oil & gas, power, financial institutions, and manufacturing companies.

The firm has a uniquely flexible and entrepreneurial culture that fosters mutually-beneficial relationships with our clients. Our attorneys make it their job to understand our clients' business goals while utilizing the law to achieve real results. We have consistently earned a reputation for being a trusted business partner who is willing to share the risks of litigation. Our commitment to superb client service is unyielding and permeates throughout the firm. We are cognizant of the fact that we are often the face of our client in the eyes of the public and we must carry and conduct ourselves in a manner that reflects the expectations of our clients.

Consistent with the principles of the founding partners, the firm **requires** its attorneys to actively participate in bar associations and community-based organizations. The firm has funded scholarships for numerous local schools, not-for-profit entities, and other organizations in Houston.

INSIDE THIS ISSUE:

<i>Nationwide Insurance is on our Side</i>	1
<i>Creative Fee Arrangements</i>	1
<i>Motion to lift Stay</i>	2
<i>Is the Person an Employee"?</i>	2
<i>Our People</i>	2
<i>New Rules for Suits Less Than \$100,000</i>	3
<i>Recent Arbitrations, Law-suits & Abstracts</i>	3

Community & People

- **Lam Lyn Philip** is a proud supporter of the Spring Branch Family Development Center.
- **Sharon Yin**, Partner, moderated May CLE Panel titled "going in-house" of the Asian American Bar Association.
- **Barbara Gardner**, Partner, was a panel member in May at the Annual Conference of the ADR Section of the Houston Bar Ass'n.. Barbara also spoke in May at the West Houston Chamber of Commerce, Governmental Affairs Committee.

NATIONWIDE INSURANCE IS ON OUR SIDE

Nationwide Insurance has retained **Lam Lyn Philip** to provide legal services relating to insurance defense matters in Texas. The insurance giant has selected **Carlos Peniche**, a partner at the firm to represent and manage its matters. Carlos has been licensed by the State Bar of Texas since 1984 and is board certified in Civil Trial Law and Personal Injury Trial Law by the Texas Board of Legal Specialization. Carlos has been a partner with **Lam Lyn Philip** for the last three years.



As one of the few double board certified attorneys in Texas, **Carlos** is among a select group of highly qualified trial attorneys. He has tried more than 60 jury cases to verdict and countless bench trials. A regular marathon runner, he handles his files with the same passions: well pre-

pared, steady pace, confidence, persistence and a clearly defined goal.

Managing Partner, **Kurt Lyn**, notes that **Carlos's** love of the law, attention to details and natural ability to get along with people are some of the traits that has led to his enormous success in the courtroom. "I think the entire jury

pool will always like **Carlos**", says **Lyn**, "he is just simply a nice and genuine person".

Having previously worked at two of Houston's largest defense firms, **Carlos** is no stranger to insurance defense. He has the added advantage of having practiced as both a plaintiff and defense attorney.

CREATIVE FEE ARRANGEMENTS

Alternative Fee Arrangements (AFAs) are agreements where a law firm and a client enter into an agreement where compensation for the law firm is based on a structure other than the traditional standard hourly billing. At the core of such agreements is the idea of shifting some or all of the legal fee risk to the law firms. Generally, large law firms are not open to AFAs and will not deviate from conventional hourly billing. Small to medium sized law firms however, tend to be flexible and more open towards AFAs. **Lam Lyn Philip** is at the forefront when it comes to AFAs

because in our experience AFAs increase clients' satisfaction levels and as a result foster greater partnerships.

AFAs are not appropriate for every matter. As per Managing Partner, **Kurt Lyn**, "We believe that successful AFAs require an understanding of our clients' businesses and their objectives. Flat or fixed fee arrangements for example, will require more oversight from the client." It is important therefore, for the client to understand that they will be "driving" the file. On the other hand, contingency fee arrangements may not require as much oversight since the shifting of the fee risk effectively aligns the

law firm's interests with the client's.

AFAs also allow for more predictable budget forecasts. With AFAs, clients never have a surprise bill. On the contrary, clients are more satisfied. Clients are generally more satisfied because this is an arrangement that's tailored to fit their needs.

Particularly on the litigation side, law firms are often viewed by business sections as a cost center. AFAs force us to reevaluate those thoughts since, when approached properly, it's best viewed as an income center for both clients and the law firm.

MOTION TO LIFT BANKRUPTCY STAY

Upon the debtor's filing for bankruptcy protection, Section 362(a) of the Bankruptcy Code ("the Code") automatically stays all proceedings in other courts with a few exceptions. However, the Code also provides for relief from the automatic stay for "cause." While "cause" is not defined by the Code, bankruptcy judges are given broad discretion to determine whether relief from the automatic stay is appropriate in any given case. *In re Barnes*, 279 F.App'x 318, 319 (5th Cir. 2008), and is determined on a case by case basis. *In re Reitnauer*, 152 F.3d 341, 344 (5th Cir. 1998).

Certain factors have been considered by the courts in determining "cause." The 5th Circuit has found cause to exist

when the interests of the bankruptcy debtor and the party ultimately liable in a proceeding are not aligned. *Feld v. Zale Corp.*, 62 F.3d 746, 761 (5th Cir. Tex. 1995). Though the court in *Feld* did not specifically adopt a test for "cause," it cited three factors as being important.

The first factor is to determine whether great prejudice against the debtor and the bankruptcy estate would result if the proceeding in another court goes forward. Second, the court compares the hardships faced by the non-bankrupt party and the debtor if the other case is stayed. Finally, the court looks at the probability that the non-bankrupt party will prevail in the other court. See *Int'l Bus. Machs. v. Fernstrom Storage &*

Van Co., 938 F.2d 731 (7th Cir. 1991).

Particularly in insurance cases, the 5th Circuit has paid careful attention to the insurance proceeds. It is well established that the Code was not designed to allow insurers to escape their obligations based on the financial misfortunes of their insureds. Although an insurance policy is generally property of the estate, courts look to who owns the proceeds. When the proceeds belong to a third party and not the bankruptcy estate, a third party may proceed in another court for recovery of the proceeds. *Houston v. Edgeworth*, 993 F.2d 51, 54, 56 (5th Cir. 1993).

IS THE PERSON AN "EMPLOYEE"?

One might believe that this is a simple question - is the person an employee? But legally, it is not simple.

Various governmental agencies have differing tests for whether a person is an "employee." For example, the test applied by the IRS has 11 factors. The Texas Workforce Commission applies 24 factors.

The primary inquiry is control-

ling the details of the person's work. If so, no matter what label you give the person, the worker is an "employee." *Limestone Prods. Distrib. v. McNamara*, 71 S.W.3d 308 (Tex. 2002). You may check on the progress of the work, but you may not give detailed instructions.

Consequences include failure to pay the proper taxes if the person is an "employee," which

may later turn out to be very expensive. Both the IRS and the Texas Workforce Commission may take interest and investigate, which could be costly.

This issue can arise in almost any industry. So if you want to hire a contract worker, you cannot control the details of his/her work.

OUR PEOPLE: MARY MARTINEZ

Mary Martinez is the firm's charming, always pleasant receptionist who began working with **Lam Lyn Philip** in August 2005.

Question: What have you found most rewarding since coming to work at LLP?

MM: Working at LLP has been great because I get to help people in need. Also, I try to help those who call and are upset to become calm and more rational. As to the firm itself, LLP shows much consideration for the employees' needs, such as time off for urgent family problems. The firm does special things

for us, for example, providing lunch on occasion for no reason. And the lawyers always say, "Thank you." That makes me feel that I am appreciated.

Question: What do you like about being the firm's receptionist, the one clients first meet?

MM: I like to offer a warm and friendly, enthusiastic greeting. I try to make sure that the caller is routed in the right direction, so that he/she is not passed around to several people.

Question: Have you worked at other law firms in the past, and if so, what did you do there?

MM: Yes, I worked as a receptionist and then as a legal secretary at firm which handled criminal and family matters.

Question: What do you believe are your best strengths?

MM: My upbeat personality, how I greet people and keep my calm. Also, I consider myself hardworking and professional.

Question: What do you enjoy doing in your spare time?

MM: Spending time with my family - we like to camp out. Also volunteering for church activities.

NEW RULES MANDATES "EXPEDITED ACTIONS" FOR LAWSUITS LESS THAN \$100,000

Effective March 1, 2013, Texas requires expedited trials if the amount claimed, including attorney's fees, does not exceed \$100,000. The only relief sought must be limited to money damages (i.e., no injunctions or other extraordinary relief may be sought). The \$100,000 amount is a hard cap. No more can be awarded regardless of the amount of the verdict.

These cases, referred to as "expedited actions," have limited discovery with the stated goal of "holding down litigation costs and getting to trial sooner." Discovery is the process of exchanging information about the case. In expedited actions, the entire discovery period is limited to 6 months. Depositions, testimony under oath before a court reporter usually taken in a lawyer's office, are limited to no more than 6 to 10 hours per side.

The case must be set

for trial within 90 days of the end of the discovery period. A court may grant only 2 continuances maximum and may continue a trial for up to 60 days each of those 2 times.

Alternative dispute resolution (ADR) remains the public policy of Texas, with mediation being the most common form of ADR. However, if the parties agree not to have ADR, no court can order the parties to ADR/mediation. In the usual court-ordered mediation, the parties are forced to pay a neutral attorney (the mediator) a fee. Half-day mediations charges range from \$350 per party to \$800 or more; full day mediations run from \$1000 per party to \$1500 or more. The parties also must compensate their attorneys, so ADR can be expensive.

If just one of the parties agrees to ADR, the court may only order a half-day ADR or mediation which, under the new

rules, may cost no more than two times the filing fee (filing fees range from \$190-225).

The trials are limited to a maximum of 8 hours per side, meaning the longest of these trials should be completed in 2 or 2 ½ days. For "good cause," the time can be expanded to 12 hours per side.

The rules dealing with expedited actions can be found under Texas Rules of Procedure 47, 169 and 190. Straight forward lawsuits involving no more than \$100,000 probably can be resolved within one year from the date it is filed without a significant amount of lawyer time and expense being incurred. A year may sound like a long time, but in terms of litigation, one year is quite short.

The party in possession of the least information, usually an individual, is at a disadvantage with short deadlines. As the old saying goes, "information is power."

"A year may sound like a long time, but in terms of litigation, one year is quite short."

RECENT LAWSUITS, ARBITRATIONS AND ABSTRACTS

ABSTRACTS OF JUDGMENT

Dell Marketing, vs. Strategic Technologies; Cause No. D-1-GN-13-000072; 126th Judicial District Court, Travis County, Texas. \$495,802.44.

GE Capital vs. Waterloo, and Paul Acker; Cause No. 199-02285-2013; In the 199th Judicial District Court, Collin County, Texas. \$11,413,699.57.

US Bank Equipment vs. Rogers Title Company; Cause No.2013-CI-10036; In the 73rd Judicial District Court, Bexar County, Texas. \$176,782.46.

LAWSUITS FILED

Motiva Enterprises, LLC (Shell Oil Company) vs. Premier Oil Company, LLC ET AL, Case No. H-13-00184; US District Court for the Southern District of Texas, Houston, Texas. \$276,105.64

Centerpoint Energy vs. Benson Pipelines; Cause No. 1021,634; In the County Civil Court at Law No. 1, Harris County, Texas. \$64,481.71

GE Capital vs. Bricker Companies; Cause No. 2013-CV-001024D; In the 406th Judicial District Court, Webb County, Texas. \$137,126.07

US Bank vs. Complete Construction Management, LLC; Cause No. 382, 744; County Court At Law No. 10, Bexar County, Texas. \$42,137.65.

Xerox vs. Geske Print Shop, LLC; Cause No. 2013-DW2403; In the 384th Judicial District Court, El Paso County, Texas. \$168,000.96

ARBITRATIONS

Parker Drilling vs. American Natural Energy Corporation; AAA File No. 70 158 00397-13. \$329,770.06

Pennzoil-Quaker State vs. Triple H&S, LLC; CPR File No. G-13-49. \$53,967.27

Pennzoil-Quaker State vs. CG Group, LLC. d/b/a Toyota of Bastrop; CPR File No. G-13-50. \$214,040.69

GE Commercial Distribution Finance Corporation vs. Diamond Trailers, Billie Bonner and Rashonda Bonner; American Arbitration Association; AAA File No. 70 148 00053. \$158,808.32

* The above is a sample of recent actions filed by Lam, Lyn & Philip files. On the average, the firm files 40-50 lawsuits monthly.