

LAM | LYN | PHILIP

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Community & People

- **Kurt Lyn and Lam Lyn Philip** is a proud supporter of the Leukemia and Lymphoma Society.
- **Kevon McBayne**, Legal Assistant, and member of Elevate At All Times, sponsored a picnic and charity event that received donated school supplies to benefit the Fort Bend County Woman’s Center.
- **Sherly Philip**, Partner, raised \$17,500 in scholarships for University of Houston Athletes at a recent golf tournament.

BARBARA GARDNER –CANDIDATE FOR DISTRICT COURT JUDGE

Lam Lyn Philip is proud to support our own Barbara Gardner in the upcoming November election for District Judge in Harris County. Barbara is currently head of the employment law group at the firm and has the experience and integrity anyone would want in a Judge.

Barbara’s education and legal career is stellar. After graduating with almost all A’s from college, She went on to graduate first in her class from South Texas College of Law. Barbara has been rated the highest possible level, “Preeminent,” by Martindale Hubbell. She has been chosen by her peers to be included in “Best Lawyers of America” since 2007. Other awards include being named in “Top 100 Trial Lawyers in Texas,” “Texas’ Super Lawyers” for a number of years,



and “Top Lawyers” in *Corporate Counsel*.

Barbara describes herself as a combination of the traditional and the modern. She states, “I was raised in East Texas by an oil field worker dad and a stay at home mom. I grew up hearing ‘If it’s worth doing, it’s worth doing well’. Also ‘Where there’s a will there’s a way.’ I also promote

women getting involved in the political process, having careers and maximizing their ability to make decisions for themselves.”

Barbara’s legal career began immediately after her graduation in 1981 when she served as a judicial clerk for the Honorable Carl Bue, United States District Judge. She then worked for Bracewell & Patterson (now “Bracewell & Giuliani”) before going to Mandell & Wright where she became a partner. In 2004 the lawyers closed Mandell & Wright and put their names on the door – Tucker, Vaughan, Gardner & Barnes.

Barbara joined Lam, Lyn & Philip in early 2013 and, as a Board Certified Labor & Employment Law Attorney (Texas Board & Legal Specialization), has enhanced the firm’s ability to meet client needs.

FITNESS PROGRAM IS A BIG HIT AT LAM LYN PHILIP

If you’ve tried to reach anyone on a Thursday between 4 and 5 pm at Lam, Lyn Philip chances are that you haven’t had much success. That’s because the time period is set aside for employees to participate in the firm sponsored fitness program.

Research shows that fitness programs are becoming more common in the workplace, and for good reason. Employees who participate have more energy, feel healthier and more

happy. Additionally, the group experience builds camaraderie with co-workers and improves employee morale.

As per managing partner, Kurt Lyn, “the decision to invest in the wellness program was a way to encourage all the firm’s employees to maintain a healthy work life balance. Although we run a business, the fact of the matter is that we spend more time together with the people we work with than anyone and at some point –business aside, you just simply care about

their health and well being.”

The fitness program is a major hit, with more than 90% of the employees participating on any given Thursday. The program is a combination of high intensity cardio and yoga and is run by an outside fitness instructor. Mary Martinez, the firm’s receptionist, says “I look forward to this hour every week because it is a time when everyone can relax and rejuvenate.”

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).

ALTERNATIVE 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**

Phillip 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.

"with AFAs, clients never have a surprise bill"

OUR PEOPLE: LESLY MARTINEZ

Lesly Martinez is one of the firm's bright and congenial legal assistants. She has been working with **Lam Lyn Phillip** for 6 years.

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

LM: Since I began here, I have gained a lot of experience in the legal field and that has been very rewarding.

Question: What do you value most in life?

LM: The most valuable thing in my life is my family.

Question: What do you believe are your biggest strengths.

LM: I would say that my biggest strengths are my interest in learning new things and my ability and willingness to always accept new challenges with a positive attitude.

Question: If you could meet one person, alive or dead, who would it be?

LM: There isn't any one person in particular. I believe in destiny—if it is meant to be, it will happen.

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

LM: I enjoy spending quality time with my family, those memories last a lifetime.

Question: Are you involved in any community activities?

LM: My daughters' are involved in Church events, Karate and cheer-leading so that means I'm involved too.

Question: What would you do if you won the lottery tomorrow?

LM: If I won the lottery, I would continue to live my life as I do today and share the blessing with my relatives in Mexico.

DOES A GARNISHMENT ACTION EXTEND THE LIFE OF A JUDGMENT?

According to Chapter 34 of the Civil Practice and Remedies Code if a writ of execution is not issued within ten years after the rendition of a judgment, the judgment is dormant. Tex. Civ. Prac. & Rem. Code §34.001(a). To prevent a judgment from becoming dormant the judgment creditor may renew the ten year period by having a writ of execution issued. For many years courts would not extend the life of a judgment based on a writ of garnishment. Their reasoning was largely based on a 1899 decision by the Court of Civil Appeals of Texas.

In *Shields v. Stark*, the Court of Civil Appeals of Texas, now known simply as the Supreme Court of Texas, held that a garnishment was not in any sense an execution. 51 S.W. 540 (Tex. App. 1899). However, in the years following that holding courts across the state have held that a variety of

post judgment actions do qualify as an execution.

Indeed, a writ of possession, an order of sale, an alias execution and a writ of venditioni exponas have all been held to qualify as an execution under §34.001(a). *In re V.R.N.*, 188 S.W.3d 835, 837 (Tex. App. – Eastland 2006, pet. denied). Now the reasoning in the 1899 case may finally be laid to rest as a recent case has held that garnishments do qualify as an execution for §34.001(a).

In *Harper v. Spencer & Associates, P.C.*, the Houston, 1st District Court of Appeals held that a writ of garnishment issued by the trial court does qualify as an execution under §34.001(a). Therefore, the garnishment extended the life of the judgment for ten years and prevented it from becoming dormant. *Harper v. Spencer & Associates, P.C.*, No. 01-13-00706-CV, (Tex. App. – Houston [1st Dist.] 2014, no pet. hist.).

The Court in *Harper* reasoned that the holding in *Shields* predated the Texas Rules of Civil Procedure, including Rule 622 which defined execution as a judicial process directing the enforcement of judgment. The Court noted that under the Rule 622 definition, many different forms of judicial enforcement qualify as an execution.

Under this reasoning, to qualify as an execution, an action must be a process, issued by a court, executed through a Texas sheriff or constable or other appropriate means for collecting on a judgment. Tex. R. Civ. P. 629.

Therefore, a writ of garnishment is an execution and may extend the life of a judgment for ten years because it satisfies the requirements of Rules 621, 622, 629 and §34.001(a).

“To qualify as an execution, an action must be a process, issued by a court, executed through a Texas sheriff or constable”

RECENT LAWSUITS AND ABSTRACTS

ABSTRACTS OF JUDGMENT

North Carolina Dept of Revenue vs. Corbett, Sandra G.; Cause No. 14-01-00414-CV; In the County Civil Court at Law No.2, Montgomery County, Texas. \$26,992.88.

Dell vs. Cablelink Solutions, LLC; Cause No. C1-CV-14-002287; In the County Court at Law No. 1, Travis County, Texas. \$37, 988.37.

Shell Energy vs. The California Mushroom, Inc.; Cause No. 56-2014-0047166—CU-CL-VTA; Superior Court of California, Ventura County, California. \$48,522.68.

US Bank Equipment vs. 459 Enterprises, LLC; Cause No. D-1-GN-14-000368; In the District Court, 345th Judicial District, Travis County, Texas. \$131,874.62.

Comerica Bank, a Texas Banking Association vs. TeCo Theatrical Productions, Inc., et al.; Cause No. CC-11-08289-B; In the County Civil Court at Law No.2, Dallas County, Texas. \$104,231.69.

Tara Energy, LLC vs. SBMC Healthcare, LLC, SBMC Re Group, LLC, McVey & Co. Investments, LLC, and Marty Lawson McVey; Cause No. 2012-18186; In the District Court, 333rd Judicial District, Harris County, Texas. \$396,780.64.

LAWSUITS FILED

US Bank vs. Buckner, Yvonne; Cause No. 14C306-L2; In the County Court at Law No. 2, Tom Green County, Texas. \$40,000.00.

Xerox vs. BCA of Texas; Cause No. CC17618; In the County Court at Law, Midland County, Texas. \$62,291.74.

GE vs. Texas Vocational Schools, Inc.; Cause No. CIV1-16965; In the County Court at Law No. 1, Victoria County, Texas. \$26,357.89.

GE vs. Dachis Corporation; Cause No. C1-CV-14-006829; In the County Court at Law No.2, Travis County, Texas. \$25,739.32.

Xerox vs. Huggins, Tommie; Cause No. D-1-GN-14-002092; In the District Court, 250th Judicial District, Travis County, Texas. \$144,785.64.

Dell vs. Hardware Solutions Builders, Inc.; Cause No. C-1-CV-14-004018.; In the County Court at Law No.2, Travis County, Texas. \$27,844.11.

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

LAM | LYN | PHILIP
Attorneys

3555 Timmons Lane, Suite 790
Houston, Texas 77027

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