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Attorneys P.C.

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Counseling On The Realities of Litigation: When a Court Battle is Necessary

By: Bret Strong

The attorneys at The Strong Firm are advocates of the highest level representing our client's legal positions. There are often times where a court battle is not only warranted, it's necessary. Counseling a client on the litigation process and preparing them for battle is critical to proper handling of a lawsuit. Far too often attorneys in their role as counselors fail to effectively communicate two of the most important realities of involvement in any litigation.

Potential Unpredictability

First and foremost, litigation and the legal system can often be highly unpredictable and almost always more expensive than a client would anticipate. Often the first request from a client is to "estimate" the time (from start to finish) and the cost of initiating or defending a lawsuit. Accurate estimates of cost and expense in litigation are nearly impossible. While the necessary steps, documents, and processes for handling a lawsuit are somewhat consistent and controllable, litigation often takes on a life of its own due to the unpredictability of the opponent and the judicial system. Unanticipated action taken by the opposing party or the court can, and often does, cost time and money to handle which could not have been predicted from the onset. Once clients are in a lawsuit, they may believe they can control the litigation process and therefore cost. This is simply not the case. As long as the other party has a claim they are pursuing (and more often than not, even in the strongest cases, the other side will dream up a counter-claim), they either need to agree to end the process or the court has to order it ended. It is this unpredictability of time and expense that often frustrates clients terribly. The process takes on a life of its own and even if the client wants out, they are unable to do so.

Negativity

Just like any battle in life, a lawsuit can become an emotional rollercoaster and a negative drain on people and organizations. Litigation is generally not a completely positive endeavor. The client is either looking for justice in a situation where the other party is not willing or able to cooperate, or defending a claim they do not believe to be justified. Neither situation is one that a party would generally have pursued had there been a more positive alternative. Because the process can last years, and involve significant numbers of people and resources, this negativity takes its toll. It is difficult for a client to be completely mentally prepared for protracted litigation, but it is our job to prepare the client and counsel them through this hard truth both before and during any litigation.

With these realities in mind, the attorneys at The Strong Firm are always prepared to be your advocate and counsel you through any lawsuit in our areas of expertise. Please feel free to contact us to discuss any civil wrong you wish to pursue or lawsuit served against you.

Bret Strong



Bret Strong is the founder and managing shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law

and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law before The United States Supreme Court. Bret has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association.

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To retain our services, please contact us and we will send you a written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.
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The Nondisclosure Agreement:

A Valuable Tool in the Protection of Confidential and Proprietary Information

By: Eric R. Thiergood, Sr.



Eric R. Thiergood, Sr.

When buying or selling a business, or even considering a joint venture with another person or entity, you should be aware of the risks in disclosing and receiving proprietary and/or confidential information such as customer information, marketing strategies, pricing information, intellectual property and vendor information prior to the actual consummation of the proposed transaction. A proper nondisclosure agreement ("NDA") should be one of the first documents executed by the parties to protect confidential or proprietary information exchanged while both sides further evaluate the proposed transaction.

One of the most important functions of an effective and properly drafted NDA is the limits it imposes on people who have access to the disclosed confidential information. Consistent with the adage "less is more," an effective NDA should strictly limit the parties to whom the confidential information can be disclosed. In most circumstances the confidential information should be disclosed only to the executives of the receiving party and any agents (e.g., attorneys, CPAs, financial advisors of the receiving party) on a need-to-know basis and only under the condition that these agents are bound to the same terms, conditions and obligations as the receiving party. When it comes to who should receive the confidential information, the fewer the better.

In the case of highly sensitive information, the disclosing party may consider limiting, controlling, and monitoring its release by providing only one physical copy of the data and requiring that it be reviewed only under the direct supervision of the providing party. By strictly prohibiting any copies or electronic transfer of the materials, the disclosing party can better control their information.

Another critical component of an NDA involves clearly and thoroughly defining the confidential or proprietary information and should include any information that may have been provided prior to executing the NDA. In defining the protected information, the disclosing party will typically seek a broader definition that includes any notes, analysis, or studies prepared by the receiving party or its agent using the protected information. Typically information that is in the public domain is commonly known or obtained lawfully from another source prior to disclosure is not protected under the NDA.

How and when the protected information is handled if the proposed transaction is terminated or not finalized is another important provision in a solid NDA. Most NDAs require that any confidential information provided is to be either destroyed or returned to the disclosing party within a set time if the proposed transaction falls through or upon demand of the disclosing party.

As with any drafting and review of important legal documents, it is critical you use an experienced law firm to ensure any obtained or received confidential information is properly protected. The Strong Firm has represented hundreds of clients in the successful negotiation, review, and drafting of NDAs.

Eric R. Thiergood, Sr., Senior Associate Attorney, joined The Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.

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Is the Cure Worse than the Disease? Proper Use of Contractual Cure Provisions

By: Royce Lanning



Royce Lanning

The standard notice and cure provisions in a contract are often a sensible and perfectly reasonable attempt to protect the parties from the consequences of an unknown or unintended breach of the contract. However, cure provisions can be used to facilitate a pattern of cyclical default or, in short-term contracts, render enforcement of the contract impracticable.

For example, a commercial property owner/manager might enter into a short-term service contract to obtain janitorial services. Secondary to the cleaning services, the owner includes a provision requiring the janitor service to inspect and report visible damage and any non-operational lighting within the building on a weekly basis. Predictably, the janitorial contract includes a cure

provision that requires notice and a cure period for any breach prior to termination or suit under the contract.

While the inspections may not be central to the cleaning services, they are a bargained for service that the owner will have to pay someone else (i.e., employee or contractor) to perform if the janitor service does not provide the reports. Accordingly, a notice of breach is issued to the janitor service when it fails to provide the inspection reports. In response the janitor service performs an inspection and provides the required reports as was intended by the inclusion of the cure provision, however, what happens if the janitor service stops providing the inspection reports again in the future?

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Introduction to Alternative Dispute Resolution

Part I: Non-binding Mediation

By: Adam Looney



Adam Looney

As a litigation attorney, I often find myself having the same conversations with each of my clients about the frustrations that come with prosecuting or defending a lawsuit within the court system. Most businesses and individuals are surprised at just how expensive, time-consuming, and unpredictable modern litigation has become. It is against this backdrop of rising litigation costs, a slow and backlogged court system, and the ever-present threat of a “runaway verdict,” that the various methods of alternative dispute resolution, or “ADR,” have seen a dramatic increase in use and popularity. In this article, my goal is to provide some general information about one of the most commonly used forms of ADR – mediation.

Mediation is a non-binding process in which the parties to a lawsuit (typically only two, though it can be many more) participate in a negotiation facilitated by a professional mediator, who is typically an experienced attorney or former judge. It is the mediator’s job to serve as the go-between for the parties in the mediation and encourage them to reach a mutually agreeable solution to the lawsuit, helping them avoid the time and expense of taking a case all the way through trial and, in most cases, appeal.

In a typical mediation, the parties begin the session in the same room where each will be given the opportunity to present a snapshot version of their case, not unlike an opening statement of a jury trial. Afterwards, the parties typically move into separate rooms and the mediator spends the rest of the session going back and forth between them, discussing the merits of the case and communicating settlement offers. The goal of the mediation is to have the parties agree on

the basic terms of a settlement agreement and thereby removing the need for a trial.

Mediation has become increasingly common in the world of modern litigation. In fact, most courts have standing orders that all parties must submit their case to non-binding mediation before they can proceed to trial. Accordingly, mediation can sometimes feel like merely another hurdle to jump through before getting to trial, however, I have found it to be an invaluable tool in resolving cases that might otherwise drag on for months, or even years.

Whenever I speak to my clients about mediation, I tell them it will likely be the last time they have real control over the outcome of their case. While there are some cases that simply cannot be settled, in many cases, mediation is an excellent tool to achieve a speedy and predictable resolution to disputes that would otherwise require months, if not years, of litigation and the associated legal fees.

I hope this article has provided some useful information about what mediation is and that you will tune in to my next installment where I will examine the next most common method of ADR – Arbitration.

Adam Looney joined The Strong Firm P.C. as Of Counsel in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a litigation associate at the law firm of Baker Botts L.L.P. During his career, Adam has zealously advocated in the courtroom, through alternative dispute resolution, and before administrative agencies to achieve creative and advantageous solutions to his clients’ most complicated legal issues.

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Living Will v. Last Will and Testament: What Do You Mean Those Aren’t the Same Thing?

By: Wendy Lambie



Wendy Lambie

An estate plan can be described in two major parts: documents that speak for you while you are alive and those that speak for you once you pass away. While an uncomfortable subject for many, a Living Will and a Last Will and Testament represent your interests and last wishes. Every adult should take the time to understand the purpose of these important documents and strongly consider executing one of each to define their “will” – their intentions and desires – both before and after death.

A Living Will speaks for you when you are alive but unable to communicate due to illness or incapacity. It defines whether or not you want to be kept alive on artificial life support in the event of terminal illness or an irreversible condition, and it removes the emotional

strain and fear your family may experience if forced to decide your wishes for you. The goal of expressing your wishes in advance is to make the process less stressful for those involved in your care and, ultimately, the execution of your final wishes.

A Last Will and Testament dictates how your estate and property are to be distributed after your death. This document can designate a guardian for your children, indicate who can organize your affairs and distribute your estate, and serve as a set of instructions that needs to be prepared in accordance with the laws of the state where you reside. Upon your death, a Last Will and Testament must be processed through a probate court to properly execute the passing of your assets. Will contests

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In Texas, a party must satisfy the notice and cure provisions in a contract prior to bringing suit. However, cure provisions are creatures of contract; they are governed by the contractual language that creates them. Many notice and cure provisions do not provide for multiple/cyclical breaches of the same provision. Therefore, the janitor service may defend the claim by arguing that it cured the prior breach when it provided the inspection reports and the new failure constitutes a new and separate breach requiring a new notice and cure period, thereby barring the owner's suit for failing to comply with the terms of the contract. In the context of a short-term contract, the janitor service's argument creates an additional complication for the owner because the owner must either (1) perform on the contract during the pendency of the suit (even though the owner's claim may be barred by failure to provide notice) or (2) the owner can terminate the contract for breach knowing that if the janitor service successfully defends the suit (based on failure to provide notice), the owner will be subject to a breach claim from the janitorial service.

Accordingly, careful consideration should be given prior to agreeing to a notice and cure provision. Indeed, in certain

short-term service contracts a notice and cure provision may be unadvisable altogether, or it may be appropriate to include language limiting the total number of cure notices within any given time period. Each party may want to consider excluding some – but not all – of the opposing party's obligations from the operation of the notice and cure provision. Ultimately, the proper use of notice and cure language involves the consideration of a number of varying and complex factors. The Strong Firm P.C. has a team of attorneys who can offer such counsel prior to drafting or entering into such a provision.

Royce Lanning, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He has parleyed his courtroom skills into private practice, focusing in the areas of corporate formation and administration, general and complex business transactions, real estate development and financing, estate planning, probate, guardianship and commercial litigation, with special emphasis on suits against international entities. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas. rlanning@thefirm.com

Kyla Wilder Joins The Strong Firm

The Strong Firm is proud to announce that Kyla Wilder has recently joined the firm as Attorney Of Counsel. Kyla, born a Texas native, spent eight years of her childhood living in Dubai, United Arab Emirates. While abroad, she had the opportunity to travel across the world, visiting countries includes France, Germany, Spain, Egypt, Thailand, and Australia, to name a few. In 1999, Kyla's family relocated back to the United States, and as luck had it, The Woodlands, Texas was her first home in the United States. She attended The John Cooper School and went on to receive her undergraduate degree from Texas A&M University – College Station, Texas; she is an involved

member of the Association of Former Students. Kyla earned her law degree from South Texas College of Law and is licensed to practice law in the State of Texas. During her second summer of law school, she lived and studied abroad at Charles University School of Law in Prague, Czech Republic. Kyla recently purchased her first home in The Woodlands and is proud to call The Woodlands home. She feels extremely lucky to start building her career with The Strong Firm and looks forward to planting roots and serving this beautiful community in the future. Kyla joined The Strong Firm in 2013.

Living Will v. Last Will and Testament

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can be time consuming and expensive, making it imperative for you to clearly outline your wishes to avoid a protracted legal battle.

Many clients ask, Do I really need either or both of these documents? Since they serve two completely different but equally important functions, it is prudent to have both a Living Will and a Last Will and Testament. These basic documents are relatively inexpensive for an attorney to prepare, and, ultimately, these documents would be available to communicate your "will", provide your family with guidance during a difficult time, and allow

you to make decisions about property you accumulated during your lifetime.

Wendy Lambie, Associate Attorney, joined The Strong Firm, P.C. in 2013 as an experienced associate. Ms. Lambie received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in depth experience in oil and gas matters; with special emphasis on title issues. wlambie@thefirm.com



The Woodlands Area Chamber Seminars



Bret Strong presented two seminars of "Connecting with Clients in The Woodlands" for **The Woodlands Area Chamber of Commerce**. Bret is pictured with Chamber board member Linda Nelson and Chamber president and CEO Karen Hoylman.

Fourth of July Parade in The Woodlands

The Strong Firm P.C. was proud to once again support the local Fourth of July Parade in The Woodlands as a sponsor. Celebrating our nation's birthday, the



parade started at The Woodlands United Methodist Church and wound through Market Street. This year's theme was "Parade of Stars" and proceeds from the dozens of float entries benefited numerous local charities. It was a fun event for people of all ages – spectators and participants alike!



June 2013 - **The Strong Firm** provided legal assistance in the negotiation and finalization of multimillion dollar Master Service Agreements with international energy companies.

June 2013 - **The Strong Firm** assisted international client in the filing of U.S. trademark for a foreign entity.

June 2013 - **The Strong Firm** represented buyer in the purchase of \$7.75 million improved commercial property located in Montgomery County.

July 2013 - **The Strong Firm** represented client in the acquisition of \$4 million retail center in The Woodlands.

July 2013 - **The Strong Firm** represented client in the formation of US subsidiaries of Norwegian and Swedish corporations.

August 2013 - **The Strong Firm** assisted client in multimillion dollar medical office joint venture development.

August 2013 - **The Strong Firm** provided legal counsel for landlord client in the termination of a local commercial lease in default.

August 2013 - **The Strong Firm** represented landlord in the negotiation of a lease for a local martial arts facility.

August 2013 - **The Strong Firm** provided legal counsel for the acquisition of an occupied medical office building near St. Luke's Hospital in The Woodlands.

We provide legal services in the all of the following areas:

- BUSINESS LAW AND CONTRACTS
- FINANCING, TRADEMARKS, AND GENERAL CORPORATE
- CORPORATIONS, PARTNERSHIPS, AND LLCs
- REAL ESTATE
- BUSINESS DISPUTES
- WILLS, PROBATE, TRUSTS, AND ESTATES
- MERGERS, SALES, AND ACQUISITIONS OF BUSINESSES
- OIL, GAS, AND ENERGY
- INTERNATIONAL BUSINESS INVESTMENT



From left: **Bradley Shaughnessy**, law clerk; **Royce Lanning**, associate attorney; **Laura Junek**, paralegal; **Wendy Lambie**, associate attorney; **Bret L. Strong**, attorney, founder, and managing shareholder; **Brian Albert**, law clerk; **Bethany Kovacs**, legal assistant; **Eric R. Thiergood, Sr.**, senior associate attorney; **Renee Glazer**, paralegal; **Adam Looney**, associate attorney; **Lisa Prado**, paralegal.