

LAM | LYN | PHILIP

LAM LYN PHILIP WELL POISED FOR ADDITIONAL GROWTH IN 2013

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Community & People

- **Jeremy Jones** will leave JPMorgan Chase at the end of year and will join Lam Lyn Philip as an associate on January 1, 2013.
- **Sharon Yin** was elected as Vice President for Programs of the Asian American Bar Association.
- **Kurt Lyn** and his wife, Dr. Michelle Lyn recently co-chaired a gala featuring Dr. Sanjay Gupta of CNN. The event, attended by over 800 people, raised more than \$1.5 million for St. Luke’s Episcopal Charities in Houston.
- **Lam Lyn Philip** is a proud supporter of the Houston Area Women Center
- **Lam Lyn Philip** is an honored sponsor of Children at Risk’s Annual Luncheon

After consecutive, record breaking growth rates between 2008 and 2011, **Lam Lyn Philip** expects that its growth rate will be just short of 6% in 2012. “This growth rate was well within the target”, says **Kurt Lyn**, managing partner of the firm. After a period of rapid growth in business the firm needed to stabilize its workforce and revamp its procedures.

The rapid growth in business was the result of an aggressive effort on the firm’s part to increase its market share of commercial collection Litigation matters. Beginning in early 2007 under the banner “**Results Matters**”, the firm successfully reached out to existing and new clients for more business. In doing this, the firm actively encouraged clients to utilize a matrix that would objectively measure our performance against our peers and if our results did not exceed theirs then they should consider terminating our services. The response was overwhelming and resulted in a sharp increase in

business placed with our firm. To date we have not lost any of the new business generated from the campaign.

The much welcomed but unanticipated increase in business necessitated an increase in physical space, human resources and adjustment of our processes. Consequently in late 2011 a conscious decision was made by the partners to be much more selective about the business that the firm accepts and to limit additional staff. A more concentrated effort was also made to integrate new staff quickly into the firm’s culture. The result of these decisions is a more stable, sustainable business that delivers real, quantifiable results for our clients.

2013 will see significant growth for **Lam Lyn Philip**. The firm’s substantial investment in a complete overall of its computer hardware and software combined with a better trained and dedicated



staff will have a noticeable impact on the results we achieve for our clients. We have fine tuned a process that takes us seamlessly into the next generation. More importantly, several clients has asked us to prepare for an increase business.

Our firm will add 3-4 attorneys in 2013. In a departure from previous hires, the firm will seek a mixture of new attorneys and more experienced, seasoned professionals. Additionally, our growth will necessitate adding and training staff to better serve our clients.

We will make it even more of a priority to visit with clients in 2013. We will offer our clients the opportunity to provide training tailored to their staff as they see fit.

Equally important, we will continue to support our community and encourage our employees to continue making a positive impact on their community. As **Lyn** puts it, “the best is yet to come as our firm matures at 20 years”. We look forward to working with you in 2013 and still firmly believe more than ever that “Results Always Matter”.

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 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 is not appropriate for every matter. 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 firm’s 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.

FRAUDULENT TRANSFERS AND REMEDIES TO CREDITORS

In collection cases, a creditor will generally pursue a particular individual or company whom it extended credit. However, there are situations where the debtor placed its assets and/or funds into the hands of a third party in order to defraud potential creditors. This type of movement of assets can include a full transfer of title or transfer of partial interest in the debtor's property. When a transfer of asset is done with the intent to hinder or defeat a creditor's claim it is referred to as a Fraudulent Transfer. As the name conveys a fraudulent transfer is illegal. A fraudulent transfer occurs in different forms and can be as simple as "I knew the creditor

was going to sue me, so I gave the brokerage account to my wife". The three types of fraudulent transfers include: 1. A transfer made with actual intent to hinder; 2. A transfer made while insolvent without receiving reasonable equivalent value; and, 3. A transfer made while insolvent to an insider. Tex. Bus & Comm. Code § 24.005 and § 24.006. Fraudulent transfer rules exist to protect a creditor whose claim arose before the transfer was made. While there are options for a creditor, it is important that the creditor have the evidence in hand before pursuing a remote party or remote asset as it will be extreme-

ly difficult to develop evidence in pretrial discovery.

A creditor will need to bring a new cause of action to "avoid" a fraudulent transfer and some of the remedies against a fraudulent transfer include: the avoidance of the transfer or the obligation to the extent necessary to satisfy the creditor's claim, injunctive relief against further disposition or transfer of the asset, or appointment of a receiver to take charge of asset transferred. If a court finds that the transfer was avoidable, the court will render a judgment for the creditor against the transferee in the amount of the value of the asset at the time it was transferred.

ORGANIZATIONS WE SUPPORT

Kurt L. Lyn, managing partner of **Lam Lyn Philip** puts it this way; "almost any organization that focuses on the well being and development of kids will get my attention". Children At Risk (CAR) certainly has his attention. CAR is a non profit organization that drives for change for children through research, education and influencing public policy. The organization is probably best known for its tireless efforts to highlight and end

human trafficking.

As a board member of CAR, Kurt serves on the Education Advocacy Coalition Committee because of his firm belief that education is by far the most reliable and predictive way to pull children out of poverty and into the middle class -or beyond. Kurt, who is also very active in creating opportunities for challenged students at both the high school and college he at-

tended, sees this as another arm of his overall commitment to education. "In another life I probably would pursue a career in education, because it can be such an equalizing force", adds Kurt. For now however, organizations such as CAR will serve as his vehicle for change.

Want to help? Please go to: www.childrenatrisk.org

OUR PEOPLE: ALEX MENDOZA

Alex Mendoza is a hard working and extremely reliable litigation assistant who began working with **Lam Lyn Philip** in July 2010.

Question: What have you found most rewarding since working at LLP?

AM: All the knowledge that I have acquired. It is rewarding to work in an environment with like minded people who have the same goals and to work together towards those goals.

Question: What are you excited for in 2013?

AM: My new baby girl!

Question: What do you value most in life?

AM: My family. We always rely and support each other, which makes life run smoothly. I always thank God for my family.

Question: What do you believe are your biggest strengths?

AM: My organizational skills. They have brought me a long way in both my personal and professional life!

Question: Who is your favorite sports team?

AM: Dallas Cowboys and Hou-

ston Rockets.

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

AM: Spending time with family and friends doing a variety of activities from going to the park to watching movies. I also enjoy drawing.

Question: Are you involved in any community activities?

AM: Yes, I'm actively involved with my church.

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

AM: Invest, spend and donate.

"Education can be an equalizing force"

ARBITRATION: BE BAREFUL WHAT YOU WISH FOR

Our firm regularly represents large corporations who are creditors seeking to collect on contracts with small to mid-sized businesses, often with a personal guarantor or two. Most of these cases are fairly simple and rarely involve taking deposition testimony. Yet many of the underlying contracts contain mandatory arbitration clauses. Large corporations should consider not routinely mandating arbitration in all of their contracts and, instead, should reserve such clauses for the most complex deals, especially in contracts with equals such as other large corporations. Otherwise, arbitration clauses should be eliminated.

Using Houston, Texas (Harris County) as an example and the American Arbitration Association (AAA) rules & fees

per its website as of November 16, 2012 as a guide for an \$80,000.00 dispute, arbitration costs will reach approximately \$3,000.00. However, the same matter can be filed and served in court for about \$300.00 .

Further, AAA charges a "hearing room rental rate" for hearings at its facilities. Of course, a trial in Texas is no extra charge.

Other considerations include: A judge is a public figure and as such is generally a more well-known person than is an arbitrator. If the parties can't agree upon an arbitrator, AAA will simply select one who may be a long retired judge no one currently has regular dealings with.

While arbitration allows for streamlined discovery processes, in simple commercial litigation cases standard discovery usually

covers the majority of discovery needs. There really is no need to "save" on discovery costs in the typical commercial collections case.

Jury trials can be waived by contract, eliminating the fear a large corporation has about going to court against the proverbial "little guy".

Short of fraud, an arbitrator's ruling cannot be appealed regardless of the mistakes of law made. A judge's mistakes can be appealed.

Bottom line: tailor your contracts, don't put mandatory arbitration clauses in all of your company's contracts; keep in mind the nature of the deal and who it is with, because in the typical commercial collections case arbitration is a big money waster with no corresponding benefit to the company.

DID YOU KNOW: BILL OF REVIEWS

A Bill of Review is an independent equitable action brought by a party to a previous suit who seeks to set aside a judgment that is no longer subject to a motion for new trial or is appealable and generally, is only considered as a last resort. In order to succeed on a Bill of Review, a petitioner must demonstrate: 1. A meritorious defense to the cause of action supporting the judgment; 2. that the petitioner was prevented from making by the fraud, accident or wrongful act of the opposing party; and, 3. that is un-mixed with any fault or negligence by the petitioner. *Caldwell v. Barnes*, 154 S.W. 3d 93, 96 (Tex. 2004). Because a Bill of Review is a direct attack on the judgment, only the court that rendered the original judgment has jurisdiction over the new proceeding. And since a Bill of Review is a new proceeding, it is treated similarly to a new action

in that the petition must be verified and the Defendant must be served.

A Bill of Review falls within the residual statute of limitations and, therefore, must be filed within four years of the date of the judgment. *Gold v. Gold*, 145 S.W.3d 212, 214 (Tex. 2004). The only exception to this is if the petitioner shows extrinsic fraud, essentially establishing that the suit or judgment was fraudulently concealed. *Id.* In such a case, the statute of limitations does not commence to run until the party discovered, or should have discovered, the fraud. *Id.*

A Bill of Review is only a proper action when there are no other legal remedies available to them. A plaintiff is not entitled to relief by way of a Bill of Review unless it has exhausted all other remedies available under Texas law at the time it filed the Bill of Review. *Caldwell*, 975

S.W.2d at 537. Although it is an equitable proceeding, the fact that an injustice has occurred is not sufficient to justify relief by Bill of Review. *Wembley*, 11 S.W.3d at 926-27. If a plaintiff has ignored available legal remedies, a petition for Bill of Review will not be granted. *Id.* Generally, a court loses plenary power thirty (30) days after the judgment is signed. Tex. R. Civ. P. 329b(a). However, there are several options available to a party before it files a Bill of Review in order to extend the court's plenary power. For example, if a party did not receive timely notice of the judgment, it can file a Motion to Extend Post Judgment Deadlines within ninety (90) days that the judgment was signed. Alternatively, a party can file a restricted appeal up to six (6) months after judgment is signed. Tex. R. App. P. 26.1(b).

"A plaintiff is not entitled to relief by way of a Bill of Review unless it has exhausted all other remedies available under Texas law at the time it filed the Bill of Review."

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Results Oriented

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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 Insurance 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.