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Results Oriented

Lam, Lyn & Philip, PC

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. We are seriously committed attorneys with a focus on our Clients' best interest at all times!

Newsletter

LAM, LYN & PHILIP, P.C.



December 2013

THANKS FOR ANOTHER GREAT YEAR!!

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Community Involvement

- LLP sponsored the World Aids Day "Getting to Zero" luncheon in December at the Westin Galleria.
- LLP sponsored the Annual Accolades Luncheon for Children at Risk in October held at Hotel ZAZA.
- LLP sponsored The Barristers of Houston ball in November held at the Petroleum Club of Houston
- LLP sponsored the annual Gala for the Asian -American Bar Association, Houston Chapter in October.
- LLP sponsored the Texas Minority Counsel Program in October held at the Four Seasons in Dallas.
- Kurt Lyn has raised over \$2,300.00 for Houston Area Women's Shelter via the half marathon run in Houston. He will match the amount raised after the run in January.
- Sherly Philip raised \$18,000.00 for U Houston Scholarships

The Christmas holidays are always an interesting and fun filled time at **Lam Lyn Philip**. The mood becomes festive as everyone starts relaxing and we look forward to spending time with our families. We reflect on the past year's accomplishments and of course the inevitable perceived short comings that we so desperately want to forget.

2013 was a great year at our firm. We exceeded our expectations and client satisfaction is at an all time high.

As a stable and one of the most successful minority owned law firms in the country we are conscious of the pride our various communities take in our success. We firmly believe that to whom a lot is given, a lot is expected. To that end, we are proud of the fact that our total giving to non profits once again exceeded \$100,000.00 in 2013.

Giving is not all however. Our attorneys are actively encouraged to undertake pro bono work and all of our em-

ployees engage in some positive community activity. Indeed, community involvement is a factor in employee evaluations.

As in prior years, a concerted effort was made to visit with our clients and under-

"Then give to the world
the best you have. And
the best will come back
to you."
-Madeline Bridges

stand their business, expectations and people. We were proud to travel across the country and visit with the various segments of **GE Capital**; we made numerous trips to New York for visits with clients **JPMorgan Chase**, **Morgan Stanley** and others; we stayed closer to home with regular visits in Dallas with clients **Comerica Bank**, **Xerox**, **TXU**, **CiCi's Pizza**; and of course, we visited regularly with many of our Houston based clients

including, **Centerpoint Energy**, **BP America**, **Shell**, **Weingarten**.

Speaking of travelling, we committed more resources than in the past to attend conferences and visits with potential clients. Almost every single week in 2013, one of our attorneys was travelling to either a conference or a visit with a client. We continue to plant the seeds knowing that we will reap the benefits in the coming years.

Taking care of our clients is important but we realize that it is equally important to take care of our employees. Our benefits equal or exceed those of our peers. The long term result of this is low turnover and a committed staff. We are committed to rewarding hard work, loyalty and just going the extra mile.

Finally, we must say thanks to all the children of our employees who competed to design our holiday card. Our understanding from the judges is that it was a difficult decision because they were all so good. The "winner" was 10 year old, Mandy Carrizales, the daughter of Lesly Carrizales who has been a legal assistant at our firm for more than 6 years. As Mandy wrote, "Seasons Greetings" to everyone.

THE SEASON FOR GIVING

Giving and service is one of our firm's founding values. At Lam Lyn Philip, service is not an abstract concept; The principals of the firm embody service to our community as a primary mission of our existence. We serve not only our clients but our community.

As an example, just this month our firm was proud to sponsor, the World Aids Day luncheon. The event, orga-

nized by AIDS Foundation Houston, is "committed to empowering individuals, families and communities affected by HIV." **Travis Torrence**, our relationship attorney at Shell, co-chaired the event.

Last month we were also proud to be a sponsor of the Children at Risk luncheon. Children at Risk is a nonprofit organization with offices in Houston and Dallas

with a focus on improving the quality of life for children through strategic research, public policy analysis, education, collaboration and advocacy. **Kurt Lyn**, managing partner of the firm serves on its board.

As per Kurt, "the holiday season certainly highlights our concern about giving and service to our community, but the truth is we do this every month of the year because it's part of our core values".

WHAT IS SEQUESTRATION?

In Texas, a writ of sequestration is an extraordinary pre-judgment remedy by which a secured creditor can take possession of the goods securing the debt or by which one claiming title to the disputed property can take possession until the matter is further resolved. Sequestration differs from *Attachment* in that it requires the claimant to have an *interest* in the sequestered property. In addition, a lawsuit *must* be filed in order to pursue sequestration.

The most common use of the writ is by commercial lenders whose loans are secured by an interest in personal property, such as equipment. A reasonable conclusion may be drawn

that the defendant or the party in possession will conceal, dispose, ill-treat, waste, destroy the property or remove it. Consequently, a secured creditor must move quickly (before judgment is rendered) in order to protect its property.

The general procedure of a writ of sequestration does vary from court to court. The process involves: an application, a hearing, an order, a bond, the issuance of a writ, and service of the writ. (A writ can only be served by the constable or sheriff's office). However, there is judicial discretion as to the hearing and the bond amount. Some judges require both the plaintiff and the defendant to be present

at the hearing while others only require plaintiff's presence. Many judges look to the fair market value when setting the bond.

Once the writ is served, a sheriff or constable will take possession of and store the property for the statutorily mandated ten days. If no replevy bond is filed by the defendant, plaintiff may then take possession of the secured property and dispose of it in compliance with the UCC §§ 9-610 – 9-614. Plaintiff is then required to send timely notice of the commercially reasonable sale to the defendant.

"Texas has one of the most generous homestead exemptions in the country."

PROCEEDS FROM SALE OF HOMESTEAD

A person's home is often considered their castle and their castle is given great protections under the law. In particular, Texas has one of the most generous homestead exemptions in the country.

In Texas, a homestead is not subject to attachment, execution, or forced sale by creditors. However, if the homestead is sold, the owner has six months to invest the proceeds into another homestead to avoid creditors' claims.

Tex. Prop. Code §41.001(c).

The six month exemption period has been held to begin on the day after the sale of homestead closes and extends until midnight of the same day of the six month following—i.e. a straight 180 day computation is now used. *In re Malone*, 201 B.R. 175, 176 (Bank. W.D. Tex 1996).

In some cases, the exemption period will expire prior to six months. Homestead pro-

ceeds do not constitute a second exemption separate from the homestead itself. The provision is only a means of allowing the debtor to obtain a new homestead. Any excess proceeds—i.e. debtor acquires new homestead without reinvesting all of the sale proceeds from the original homestead is fair game for creditor. *Matter of England*, 975 F.2D 1168, 1170 (5th Cir. 1992).

OUR PEOPLE: KEVON MCBAYNE

Kevon McBayne is a experienced and well-rounded litigation assistant who began working with **Lam Lyn Philip** in October 2005. Kevon is highly valued and admired in the office.

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

KM: Knowledge about the legal system, experience and learning to become a professional young man. The bar for professionalism is set high in our office and it translates into my personal life.

Question: What are you excited for in 2014?

KM: I'm excited for the new things that 2014 will bring for me and my family.

Question: What do you value most in life?

KM: My son, Kingston.

Question: What do you believe are your biggest strengths?

KM: In the office, I am a team player. Also, since I began working here in 2005, I have gained a lot of experience.

Question: What do you enjoy do-

ing in your spare time?

KM: I enjoy spending time with my son. We play sports and go to the park often.

Question: Are you involved in any community activities?

KM: I am involved in funding and legal research for an organization called EAT –Elevating at all Times. It is a nonprofit organization that focuses on preparing student athletes for life after sports. Also, I volunteer for surrounding school districts.



New Rule for Dismissal of Baseless Causes of Action

TRCP Rule 91a which became effective as of March 1, 2013 allows for the dismissal of baseless causes of actions. Rule 91a is a separate procedure that authorizes dismissal and does not supersede or affect any other procedures relating to dismissals. *TRCP 91a9*. Unlike existing dismissal rules, Rule 91a *requires* the court to award attorney's fees for the prevailing party.

A motion to dismiss under Rule 91a must be filed within 60 days after the first pleading containing the chal-

lenged cause of action is served. Moreover, it must be filed at least 21 days before the hearing. To ensure that the court provides a prompt hearing, the Rule also requires the court to grant or deny the motion within 45 days after it is filed.

To prevail, the movant must show the cause of action has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable

person could believe the facts plead.

Although the standard for Rule 91a appears to be high, it has been particularly useful for **Lam Lyn Philip's** collection practice group. Collection actions are commonly met with baseless counterclaims. Since the enactment of Rule 91a, **Lam Lyn Philip's** collection practice group has successfully utilized Rule 91a to deter debtor Defendants from asserting baseless counterclaims to delay Plaintiff's collection efforts.

"Rule 91a requires the court to award attorney's fees for the prevailing party."

RECENT LAWSUITS, ARBITRATIONS AND ABSTRACTS

ABSTRACTS OF JUDGMENT

Republic Bank vs. Weir Brothers; Cause No. DC-11-10027-1; In the 162nd Judicial District Court, Dallas County; \$350,000.00

US Bank v. Puretech Body; Cause No. 13-1046-C26; In the 26th Judicial District Court, Williamson County, Texas. \$205,550.01

Xerox vs. Morrell; Cause No.2013-61207; In the 151st Judicial District Court, Harris County, Texas. \$45,678.15.

Comerica Bank vs. Teco Theatrical Productions et al; Cause No. CC-11-08289-B; In The County Civil Court at Law No. 2, Dallas County, Texas. \$104,231.69.

LAWSUITS FILED

TXU vs. Rahil & Rohan, LLC; Cause No. 2013-49448; In the 113th Judicial District Court, Harris County, Texas. \$32,617.89

BP America vs. David Cook; Cause No. 1040772; In the County Civil Court at Law No. 4, Harris County, Texas. \$92,117.00

GE Capital vs. South Texas Reprographics; Cause No. 2013-CL-13-266; In the County Court At Law No. 8, Hidalgo County, Texas. \$85,403.80

Dell Marketing vs. Systms of NY, INC; Cause No. D-1-GN-13-003442; In the 53rd Judicial District Court, Travis County, Texas. \$120,731.24

Weingarten Realty v. Elite MMA.; Cause No. 66,306-A; In the 47th Judicial District Court, Randall County, Texas; \$363,693.03

ARBITRATION

Parker Drilling vs. American Natural Energy Corporation; AAA File No. 70 158 00397-13. Arbitration award of \$392,869.00 plus Attorney's fee.

Pennzoil-Quaker State vs. Shultz Distributing Inc.; CPR File No. G-14-20. \$278,270.65

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.