

Lam Lyn Philip

Attorneys

Alternative Fee Arrangements

An Alternative Fee Arrangement (AFA) is when a law firm and a client enter into an agreement in which compensation for the law firm is based on a structure other than traditional hourly billing. Such an agreement shifts some or all of the legal fee risk to the law firm.

Lam Lyn Philip is at the forefront of AFAs because in our experience, such agreements increase clients' satisfaction levels and as a result foster greater partnerships.

AFAs are 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, 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 the creation of more predictable budget forecasts, as clients never receive a surprise bill. Clients are more satisfied because this is an arrangement that's tailored to fit their needs.

Law firms are often viewed

by business sections as a cost center, particularly on the litigation side. AFAs force us to reevaluate these preconceptions, as when approached properly they are best viewed as income centers for both clients and the law firm.

There is no doubt that AFAs are here to stay. Today, most legal departments embrace them. However, twenty-five years ago, most GC's and in-house counsel we visited initially dismissed the idea. But we have always argued that, particularly when coupled with exceptional client service, the adoption of AFAs almost always results in delighted clients.



Kurt L. Lyn, Managing Partner

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Community & People

- **Anita Jamali** recently joined **Lam Lyn Philip** as an associate. Anita is a graduate of University of Texas (Austin) and South Texas College of Law Houston.
- **Kurt Lyn** was recently recognized for obtaining one of 2017's top 100 verdicts in Texas.
- **Lam Lyn Phillip** donated \$10,000.00 for a research scholarship at Texas Children's Hospital.
- **Lam Lyn Phillip** donated \$50,000.00 toward construction of a new library at Seminary of the Southwest in Austin, Texas. **Kurt Lyn** serves on the seminary's board.

Commercial Reasonableness of Equipment Sale

Under TEX. BUS. & COM. CODE § 9.610(c), every aspect of the disposition of collateral must be commercially reasonable. The issue of commercial reasonableness is inherently one of fact. *Lister v. Lee-Swofford Invs., L.L.P.*, 195 S.W.3d 746, 748-49 (Tex. App. – Amarillo 2006, no pet.). Commercial reasonableness requires the creditor to make a sincere effort to obtain the full market value for the collateral. *Bank One, Texas, N.A. v. Steward*, 967 S.W.2d 419, 451 (Tex. App. - Houston [14th Dist.] 1998, pet. denied).



Joni M. Fraser, Associate

Courts have considered the following factors in evaluating the commercial reasonableness of the disposition of collateral: (1) whether the secured party endeavored to obtain the best price possible; (2) whether the property was available for inspection before sale; (3) the condition of the collateral and any efforts made to enhance its condition; (4) whether the collateral was sold in bulk or piecemeal; (5) whether the sale was private or public; (6) the advertising undertaken; (7) whether the sale occurred at a propitious

time; (8) the number of bids received; (9) the method employed in soliciting bids; (10) whether the expenses incurred during the sale were reasonable and necessary; (11) the state the collateral was in; and (12) where the sale was conducted. *Id.* at 450. The inquiry's purpose is to ensure that the creditor realizes a satisfactory price. This is not necessarily the highest price, e.g., it is recognized that secured creditors frequently sell in the low end of wholesale markets. *Regal Finance Co. v. Tex. Star Motors*, 355 S.W.3d 595, 601 (Tex. 2010).

Recovering Expatriate Tax Obligations

At the core of a company's Tax Equalization policy is the intent that employees on overseas assignment should not be in a better or worse position than they would be if they were working in the U.S.

The United States taxes its citizens and residents on worldwide income. At the same time, a foreign government may also tax the income received by United States citizens while working in its jurisdiction. Consequently, U.S. citizens working abroad often face the burden of being taxed by the U.S. and a foreign government on the same income.

Many companies that employ U.S. citizens to work overseas have developed guidelines and benefit programs to alleviate the issue. These benefits often seek to equalize the employee's tax burden to what it would have been had they remained in the United States. Because expat tax policies are so complex, employers often mandate that employees use a designated tax services provider -usually one of the big four accounting firms.

Employers typically have employees sign a contract that memorializes employees' obligations in order to receive the benefits. Often employees are obligated to (1) Prepare and file all

required U.S. and state returns accurately and completely; (2) Use the tax provider engaged by the employer; (3) Comply with all applicable laws of both their home and assignment countries. Employees may also be advised that understatement of income or overstatement of deductions is a violation of the agreement.

The tax services provider typically sets up consultations with employees. During the consultation, employees are notified of record keeping requirements, the tax equalization process, the tax provider's responsibilities, and the submission deadlines for their assignment. Employees may also be notified that they will be responsible for any late penalties should they fail to submit within their deadlines.

Employees are also notified that failure to comply may result in forfeiture of tax advances and expatriate assignments, as well as disciplinary action, including termination. Employees should be notified that credits attributa-

ble to the employer's payment of foreign taxes must be repaid to the employer. They may also be notified that legal remedies, including the filing of a civil suit, may result from a failure to comply.

Finally, employers may want to include venue and jurisdiction clauses in the agreement to clarify where a civil suit should be filed in the event of an employee's failure to comply. Employers should also be mindful of the statute of limitations in their jurisdiction and how it may affect any civil suit that they file.

Lam Lyn & Philip has successfully represented several clients in matters involving tax equalization agreements.



Jeremy M. Jones, Associate

Proceeds From Sale Of Homestead

A man's home is often considered his castle and his castle is given great protections under the law. Notably, Texas has one of the most generous homestead exemptions in the U.S.

In Texas, a homestead is not subject to attachment, execution, or forced sale by creditors. The definition of homestead varies depending on whether or not you are in a

urban or rural area. An "urban homestead" exemption protects up to 10 acres of contiguous land; a "rural homestead" exemption protects up to 200 contiguous or non-contiguous acres. When a homestead is sold, the proceeds of the sale are not subject to seizure for a creditors' claim for six months after the date of sale. Tex. Prop. Code § 41.001(c).

The six month exemption

period has been held to begin on the day after the sale of a homestead closes and extends until midnight of the same day of the six month following—i.e. a straight 180 day computation is not used. In re Malone, 201 B.R. 175, 176 (Bank. W.D. Tex.1996).

Sworn Accounts

A suit on sworn account is a procedural tool based on Rule 185 of the Texas Rules of Civil Procedure, and is a common and useful collection procedure for creditors.

In an action founded upon an open account or claim for goods, wares and merchandise, including any claim for a liquidated money demand based upon a written contract, the account itself is prima facie evidence that a claim for the amount is owed if a systematic record has been kept and the record is supported by an affidavit. The goal of a plaintiff in filing a suit on sworn account is to establish a prima

facie right of recovery. Tex. R. Civ. P. 185. If the plaintiff pleads a suit on a sworn account, the defendant must file a sworn denial. *Id.* A defendant who does not file a timely written denial - under oath, shall not be permitted to deny the claim. *Id.*

To prevail in a cause of action on sworn account, a party must show: (1) that there was a sale and delivery of the merchandise or performance of the services; (2) that the amount of the account is just, that is, that the prices were charged in ac-

cordance with an agreement or in the absence of an agreement, they are usual, customary and reasonable prices for that merchandise or services; and (3) that the amount is unpaid. See Tex. R. Civ. P. 185; *Worley v. Butler*, 809 S.W.2d 242, 245 (Tex.App. —Corpus Christi 1990, no writ). Once these pleading requirements are met and the opposing party fails to file a verified denial, the petition and affidavit are prima facie evidence of a sworn account. Tex. R. Civ. P. 185.



Anita Jamali, Associate

Unlike breach of contract actions in which a defendant can file a general denial, for suits on sworn accounts, the defendant must file a sworn denial

Recent Lawsuits and Judgments

Lawsuits

Dell Marketing v. Consulate Management Company, LLC; Cause No: D-1-GN-19-000795; 200th Judicial District Court, Travis County, TX. (Breach of contract for sale of products). *Kurt Lyn & Jeremy Jones for Dell.*

Weingarten Realty v. Anju Donuts of Humble LLC, et al.; Cause No. 2019-11652; 80th Judicial District Court, Harris County, TX. (Breach of contract for commercial real estate lease). *Kurt Lyn & Joni Fraser for Weingarten.*

US Bank v. WG Kirby, et al.; Cause No. 2018-CI-05708; 288th Judicial District, Bexar County, TX. (Breach of contract for equipment finance agreement). *Kurt Lyn & Joni Fraser for US Bank.*

Dell Marketing v. Infosight, Inc.; Cause No. C-1-CV-19-001452; In the County Court at Law No. 2, Travis County, TX. *Kurt Lyn & Anita Jamali for Dell.*

BP America, Inc. vs. Mark G. Johnson; Cause No. 2018-50394; 11th Judicial District Court, Harris County, TX. (Breach of contract for tax equalization policy). *Kurt Lyn & Jeremy Jones for BP.*

BMO Harris Bank v. Gold Transport LLC, et al.; Cause No. 2018-002031-1; County Court at Law No. 1, Tarrant County, TX. (Breach of contract for loan and security agreements). *Kurt Lyn & Jeremy Jones for BMO Harris Bank.*

Xerox Corporation v. Jay Impressions, Inc., et al.; Cause No. CV-0082735; In the County Court at Law No. 3, Galveston County, TX. (Breach of contract for lease agreements). *Kurt Lyn & Joni Fraser for Xerox.*

EP Energy E&P Company, L.P. v. Haugen Corporation; Cause No. 1093193; In the County Civil Court at Law No. 1, Harris County, TX. (Breach of contract for operating agreements). *Kurt Lyn & Jeremy Jones for EP Energy.*

Exxon Mobil Corporation v. Jeffrey Armstrong; Cause No. 2019-13563; In the 334th Judicial District Court, Harris County, TX. (Breach of contract for expatriate tax equalization agreement). *Kurt Lyn & Joni Fraser for ExxonMobil.*

CenterPoint Energy Resources, Corp. v. Jeronimo Cruz, et al.; Cause No. 1120094; In the County Civil Court at Law No. 2, Harris County, TX. (Pipeline damage). *Kurt Lyn & Joni Fraser for CenterPoint.*

Judgments

Shell Trading v. Carbon Cycle Energy; Cause No. 2018-69434; 281st Judicial District Court, Harris County, TX. \$118,797.89. *Kurt Lyn & Jeremy Jones for Shell.*

Xerox Corporation v. Loomis International; Cause No. 2018-23740; 129th Judicial District Court, Harris County, TX. \$205,166.00. *Jeremy Jones for Xerox.*

Wells Fargo Vendor Financial, LLC v. Argenta Field Solutions LLC; Cause No. 2018-DCV-3026-B; 117th Judicial District Court, Nueces County, TX. \$20,395.15. *Kurt Lyn & Joni Fraser for Wells Fargo.*

U.S. Bank National Association v. P.Q. Machine, L.P., et al.; Cause No. 17-04-05204; 410th Judicial District Court, Montgomery County, TX. \$177,577.79. *Kurt Lyn and Joni Fraser for U.S. Bank.*

Dell Marketing, L.P. v. James Burton Brown; Cause No. D-1-GN-18-007043; 200th Judicial District Court, Travis County, TX. \$148,222.07. *Kurt Lyn & Jeremy Jones for Dell.*

Dell Marketing, L.P. v. Unitiv, Inc.; Cause No. D-1-GN-18-000515; 261st Judicial District Court, Travis County, TX. \$105,847.18. *Kurt Lyn & Joni Fraser for Dell.*



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Results Oriented

About 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 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.