

## Chamberlain Hrdlicka's Appellate Practice 2018 Highlights

(Houston, TX) – 2018 was another banner year for [Chamberlain Hrdlicka's](#) Appellate Law section, which convinced higher courts to reverse over fourteen millions dollars in judgments wrongfully taken against the Firm's clients.

Chaired by Steven Knight, Chamberlain Hrdlicka's [Appellate Practice](#) handles appellate matters in state and federal courts throughout the United States for large national and multi-national corporations, small to mid-sized companies, as well as individuals, both in support of and attacking judgments and the pursuit of alternative appellate remedies. The firm also regularly handles "bet the company" cases.

With more than seventeen years of appellate experience that started with an appellate clerkship, [Knight](#) has successfully represented clients in the Texas Supreme Court, the Fifth Circuit Court of Appeals, and many intermediate appellate courts. He has also prepared and filed countless appellate briefs, including filings in the United States Supreme Court. Knight is an active member of the Appellate Section of the Houston Bar Association and the Texas State Bar Appellate Section, where he has served as the Co-Chair of the Continuing Legal Education (CLE) Committee.

A selection of 2018 appellate wins in a variety of practice areas demonstrates the breadth and depth of Chamberlain Hrdlicka's Appellate Section:

### Statutory, Negligence and Fiduciary Duty:

The Supreme Court of Texas reversed and rendered a \$7.5 million judgment entered against grandparents who were accused of "aiding and assisting" their adult daughter's interference with their former son-in-law's possessory rights to his children. The case involved the proper interpretation and application of Family Code § 42.002, which authorizes a civil action against a person "who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a possessory right of another person" and Family Code § 42.003, which imposes civil liability for assisting interference with a possessory right. The court agreed that there was no evidence that the grandparents assisted any of their daughter's misconduct, which was unforeseeable as a matter of law.

Steven Knight authored the Petitioners' Brief on the Merits and argued the case. The case citation is *Bos v. Smith*, 556 S.W.3d 293 (Tex. 2018).

### Business and Individual Tax:

The United States Court of Appeals for the Fifth Circuit reversed a \$4.3 million judgment entered against a physician after a district court found him personally liable under 26 U.S.C. § 6672 for the unpaid withholding taxes of his medical practice. The physician successfully argued that the judgment was erroneous because there was no evidence that full amount of the penalty was available to pay to the government after he aware of the unpaid taxes as required by section 6672.

Steven Knight and Larry Sherlock authored the Appellant's Brief, and Knight argued the case. The case citation is *McClendon v. United States*, 892 F.3d 775 (5th Cir. 2018).

### Aiding and Abetting Civil Assault:

The Fourteenth Court of Appeals reversed and rendered a nearly \$2.3 million judgment against a store manager for allegedly "aiding and abetting" a co-employee commit a civil assault. The court determined that "aiding and abetting" is not recognized under Texas common law.

Steven Knight represented the store manager on appeal and argued the case on his behalf. The case citation is *Solis v. S.V.Z.*, \_ S.W.3d \_, 2018 WL 6053880 (Tex. App.—Houston [14th Dist.] 2018).

### Mandamus - Probate:

The Fourteenth Court of Appeals granted a petition for writ of mandamus, finding that the probate court abused its discretion in ordering an independent executor of an estate to post a \$900,000 bond. Under Estate Code § 305.102, a probate court may order an independent executor to post a bond after the filing of a former complaint if the court finds that the executor is wasting, mismanaging, or misapplying the estate. The probate court abused its discretion because there had been no formal complaint and the record established that there had been no mismanagement.

Steven Knight and Ryan Cantrell authored the Petition for Writ of Mandamus. The case citation is *In re Cassar*, No. 14-17-00825-CV, 2018 WL 830687 (Tex. App.—Houston [14th Dist.] February 13, 2018)

### Mandamus - Disqualifying Conflict:

The Fourteenth Court of Appeals granted a petition for writ of mandamus, instructing the lower court to vacate an erroneous attorney-disqualification order premised on Disciplinary Rule of Professional Conduct 3.08. In the trial court, the respondent argued that the petitioner's attorney should be disqualified because he was a material witness to the facts of the case. However, respondent waited

over a year after they discovered the alleged conflict before seeking disqualification. The court of appeals determined that respondent waived the remedy of disqualification.

Steven Knight authored the petition for writ of mandamus. The case citation is *In re Kyle Financial Group, LLC*, \_\_ S.W.3d \_\_, 2018 WL 5797303 (Tex. App.—Houston [14th Dist.] 2018).

Homeowners' Association:

The Ninth Court of Appeals affirmed a judgment in favor of a homeowners' association, which prevailed on its claim for past-due assessments and attorneys' fees following a jury trial. On appeal, the homeowners argued that the association breached various covenants, excusing their obligation to pay the assessments. The court rejected the homeowners' argument and determined that the jury's verdict was proper.

Steven Knight authored the Appellee's Brief and argued the case. The case citation is *Seeger v. Del Lago Owners Association*, No. 09-16-00450-CV, 2018 WL 2055435 (Tex. App.—Beaumont, May 3, 2018, pet. denied).