1200 Smith Street, Suite 1400
Houston, Texas 77002
Tel: 713.658.1818
www.chamberlainlaw.com

Chamberlain Hrdlicka
Attorneys at Law

Media contact:
Ania Czarnecka
Ward for Chamberlain Hrdlicka
713-351-9165
aczarnecka@wardcc.com

Final Judgment Entered in Landmark Decision: Federal Tax on Crude Oil Exports Unconstitutional, Court orders $4.2 Million Tax Refund and statutory Interest

Houston, TX – Jan. 11, 2021 In a federal tax refund case with significant implications for the oil and gas industry, the Court determined that § 4611(b) is an unconstitutional tax on exports and in its final judgment ordered a refund of more than $4.2 million in taxes as well as statutory interest.

Trafigura Trading, LLC, a market leader in the global commodities industry, retained Chamberlain Hrdlicka to challenge the constitutionality of 26 U.S.C. § 4611(b), which imposes a "tax on . . . domestic crude oil . . . exported from the United States." The taxes are one of the sources of funding of the Oil Spill Liability Trust Fund, enacted as part of the Oil Pollution Act of 1990. For the tax periods in question, Trafigura paid over $4.2 million in taxes on its crude oil exports. After being denied a refund by the Internal Revenue Service, Trafigura filed a lawsuit in the Southern District of Texas.

Trafigura argued that § 4611(b) violates the Export Clause of the United States Constitution, which states: "No Tax or Duty shall be laid on Articles exported from any State." The Government did not dispute that Trafigura paid the taxes but argued that § 4611(b), while labeled a tax, is a user fee paid by exporters in exchange for statutory capped liability under the Oil Pollution Act of 1990. If characterized as a user fee instead of a tax, the Government maintained, the Export Clause would not forbid the charge.

Supreme Court guidance on the user fee defense is found in two cases that stand in contrast. In *Pace v. Burgess*, decided in 1875, Congress imposed an excise tax on tobacco and enacted a companion provision exempting tobacco intended for export. To identify those exempt packages, exporters were required to pay 25 cents in exchange for a stamp that it could place on the package. The Court found that the charge was a user fee because the price of the stamp did not fluctuate with the quantity or value of the export and the fee closely approximated the cost in providing the stamp.

That was not the case in *United States v. U.S. Shoe Corp*., where, in 1998, the Court struck down a Harbor Maintenance Tax on commercial exports as unconstitutional under the Export Clause. Unlike the 25-cent charge in *Pace*, the Harbor Maintenance Tax fluctuated with the quantity or value of the export and did not closely approximate costs in providing harbor maintenance services to the taxpayer.

On September 8, 2020, the Court determined that § 4611(b) is an unconstitutional tax on exports because the amount of taxes varies depending on the quantity of the crude oil export, and "the charge does not fairly match the exporter's use of the services provided by the funds raised from the charge." At the time, the Court deferred its decision as to the remedy.

On January 7, 2021, in its final judgment, the Court ordered the Government to refund Trafigura $4,215,924 in taxes that the company paid for tax periods at issue, as well as statutory interest pursuant to 28 U.S.C.A. §2411.

Trafigura is represented by Chamberlain Hrdlicka attorneys Steven J. Knight, lead counsel and Chair of the firm's Appellate practice, Lawrence W. Sherlock, Co-Chair of the firm's Tax Controversy practice, and Peter A. Lowy, Co-Chair of the firm's State and Local Tax Controversy and Planning practice.

About Chamberlain Hrdlicka

Chamberlain Hrdlicka is a diversified business law firm with offices in Houston, Atlanta, Philadelphia and San Antonio. The firm represents both public and private companies, as well as individuals and family-owned businesses across the nation. The firm offers counsel in civil appeals; bankruptcy, restructuring, & creditor rights; commercial litigation; condemnation and eminent domain law; construction & real estate law; corporate, securities and finance; employee benefits & executive compensation; energy and maritime law; ERISA; estate & income tax planning & estate administration; exempt organizations; federal white collar criminal defense; immigration & international law; insurance law; intellectual property; labor & employment; paycheck protection program audits & investigations; privacy & data security; probate & fiduciary litigation; state & local tax; tax controversy; tax planning & business transactions; and technology & IP transactions. For more information, visit: www.chamberlainlaw.com.