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CHAMBERLAIN HRDLICKA APPELLATE ANNOUNCEMENT:

Fifth Circuit Court of Appeals Affirms Judgement Entered in Landmark Decision: Federal Tax on Crude Oil Exports Unconstitutional

Houston, TX – March 25, 2022 In a federal tax refund case with significant implications for the oil and gas industry, the United States Court of Appeals for the Fifth Circuit affirmed the district court's determination that 26 U.S.C. § 4611(b) is an unconstitutional tax on exports, entitling the taxpayer to a refund of more than $4 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 § 4611(b), which imposes a "tax on . . . domestic crude oil . . . exported from the United States." It is 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 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, which ultimately determined 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 appealed.

On appeal, the Government did not dispute that Trafigura paid the taxes but argued that § 4611(b), while labeled a tax, is a "user fee" paid in exchange for government services—cleanup costs that benefit the oil industry. If the charge were to be characterized as a user fee instead of a tax, the Government maintained, the Export Clause would not forbid the charge. Trafigura argued, in response, that § 4611(b) lacks the attributes of a user fee under the Supreme Court's two seminal user fee cases because the amount of the tax varies with the quantity of the export and does not correlate with any service rendered to the taxpaying exporter.

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 exempt packages, exporters paid 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 charge 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.

A panel of Fifth Circuit Judges consisting of Judges Wiener, Graves, and Ho heard oral argument on February 3, 2022, and issued its opinion on March 24, 2022, affirming the district court's decision. Judge Ho, who authored the opinion, examined the Export Clause from a historical perspective before explaining that § 4611(b) lacks the attributes of a user fee as articulated by the Supreme Court.

Trafigura is represented by Chamberlain Hrdlicka attorneys Steven J. Knight, lead appellate counsel and Co-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.