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Chamberlain Hrdlicka's Appellate Practice Experiences Banner Year in 2017

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(Houston, TX - Jan. 26, 2018) - 2017 was another banner year for Chamberlain Hrdlicka's Appellate Law section, including the recent successful appeal in a slander lawsuit, publicized by Law360.com. The Houston-based law firm is also gearing up for a busy 2018 with a number of important appellate matters already pending in the Texas Supreme Court, the Fifth Circuit Court of Appeals, and intermediate appellate courts.

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.

"Under Steven's leadership, the appellate section in Houston has experienced an exceptional year in 2017," said Wayne Risoli, Chamberlain Hrdlicka's managing shareholder. "The appellate practice supplements our robust litigation practice, offering our clients a complete suite of litigation services."

With more than sixteen 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 2017 appellate wins in a variety of practice areas demonstrates the breadth and depth of Chamberlain Hrdlicka's Appellate Section:

Intellectual Property. In March, the United States Court of Appeals for the Fifth Circuit sided with Chamberlain Hrdlicka's client and reversed (and rendered) a substantial trademark infringement judgment following a jury trial. In reversing the judgment, the Court of Appeals clarified the very narrow circumstances under which royalties may be available in federal trademark cases and held that the plaintiff offered insufficient evidence. Based on the court's reversal, the defendant was also protected from the plaintiff's claim for attorneys' fees, which was tabled until after the appeal.

Chamberlain Hrdlicka's Appellate Practice Experiences Banner Year in 2017, *Continued*

Steven Knight wrote the winning appellant's brief and argued the case. The case citation is *Streamline Production Systems, Inc. v. Streamline Manufacturing*, 851 F.3d 440 (5th Cir. 2017).

Insurance. In May, the Fourteenth Judicial District Court of Appeals sided with Chamberlain Hrdlicka's client, an insurance company, and reversed the trial court's erroneous settlement allocation. The plaintiff settled his claims against the at-fault driver and then tried his claims that the driver was underinsured. Following the trial, the trial court credited the insurer for only half of the settlement. The court of appeals reversed, holding, among other things, that community property laws do not apply to deprive an insurer of the full settlement credit and the insured, not the insurer, has the burden of proof with respect to allocation.

Steven Knight argued the case. The case citation is *Farmers Texas County Mutual Insurance Company v. Okelberry*, 525 S.W.3d 786 (Tex. App.-Houston [14th Dist.] 2017, pet. denied).

Negligence. In July, the Fourteenth Judicial District Court of Appeals sided with Chamberlain Hrdlicka's client, a pre-employment screening firm, and affirmed summary judgment in its favor in a high-profile work-place shooting death case. The case garnered significant media exposure because the location of the shooting was a well-known local car dealership. On appeal, the family of the victim argued that screening firms have a broad duty to report all information allegedly available about the candidate that may bar employment, regardless of the agreed scope of pre-employment screening services requested by the employer. The family also argued that the screening firm's promotional material gave rise to such expansive duties. The court of appeals held that the scope of duties owed by the pre-employment screening firm is limited to the services it agreed to perform, and neither general tort concepts nor promotional materials give rise to heightened duties.

Steven Knight wrote the winning appellee's brief, and Christine Kirchner and Jeff Wigginton, Jr. handled the case in the trial court and assisted with the appeal. The case citation is *Kuentz v. Cole Systems Group, Inc.*, ___ S.W.3d ___, 2017 WL 5493177 (Tex. App.-Houston [14th Dist.] July 20, 2017).

Construction. In August, the First Judicial District Court of Appeals affirmed a final judgment in favor of Chamberlain Hrdlicka's client, a general contractor, in a significant and complex construction law case. The general contractor sued and prevailed against project owner for wrongfully withholding construction funds following substantial completion. In affirming the judgment, the court of appeals held, in a 63-page opinion, that the project owner committed a material breach by withholding the final payment; the fact that a subcontractor filed a "fund-trapping notice" did not excuse the breach; and the contractual indemnification provision did not require general contractor to indemnify the project owner.

Steven Knight wrote the winning appellee's brief and argued the case. The case citation is *Whole Foods Market Rocky Mountain/Southwest, L.P. v. Cleveland Construction, Inc.*, ___ S.W.3d ___, 2017 WL 3429939 (Tex. App.-Houston [1st Dist.] 2017, no pet.).

Health Care Liability. In September, the First Court of Appeals issued a significant opinion further defining what constitutes a "health care liability claim" under the Texas Medical Liability Act. Chamberlain Hrdlicka's client, a reputable pharmacy owner, sued a physician for business disparagement. The physician argued that the alleged disparaging comments were directed to shared clients/patients, rendering the statements sufficiently tied to health care as to invoke the Act. The trial court ruled that the disparagement claims were

Chamberlain Hrdlicka's Appellate Practice Experiences Banner Year in 2017, *Continued*

not health care liability claims, and the physician appealed. The court of appeals affirmed, holding that "[a]t most, appellees' claims are 'merely tangential[ly] related to the medical services provided by appellants,' which is insufficient to invoke the Act.

Steven Knight wrote the winning appellee's brief. The case citation is Syed, M.D. v. Wellness Pharmacy, No. 01-16-00856-CV, 2017 WL 4171939 (Tex. App.-Houston [1st Dist.] September 21, 2017, pet. denied).

Fraud/Fiduciary Duty. In October, the Fourteenth Court of Appeals sided with Chamberlain Hrdlicka's client in complex business divorce case that resulted in the recovery of substantial damages for fraud and breach of fiduciary duty. On appeal, the defendant argued that the evidence of damages, which was presented through the testimony of the business's owner, was legally and factually insufficient because it was too imprecise. The court of appeals disagreed and held that the business owner's testimony was sufficient to support the jury's verdict.

Steven Knight and Tres Gibbs wrote the winning appellee's brief. The case citation is Hamdan v. Hamdan, No. 14-16-00548-CV, 2017 WL 4930933 (Tex. App.-Houston [14th Dist.] Oct. 31, 2017, no pet.).

The above selection are just a few examples of the successful work Chamberlain Hrdlicka's Appellate Practice does on behalf of its diverse portfolio of clients. If you have questions about general litigation or appellate work, we are here to help. Contact Steven Knight at steven.knight@chamberlainlaw.com or 713.654.9603.

