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Significant Victories & Reported Decisions

Chamberlain Hrdlicka attorneys have litigated hundreds of cases throughout the federal and state court systems. Below is a sampling of litigation matters handled by our attorneys.

- [View Admiralty & Maritime Litigation Cases](#)
- [View Construction Litigation Cases](#)
- [View Energy Litigation Cases](#)
- [View Equine Litigation Cases](#)
- [View ERISA Litigation Cases](#)
- [View Labor & Employment Litigation Cases](#)
- [View Tax Litigation Cases](#)
- [View Other Civil Litigation Cases](#)

Admiralty & Maritime Litigation

- *Solano v. Gulf King 55*, 212 F.3d 902 (5th Cir. 2000) – Fifth Circuit, reversing lower court decision on interlocutory appeal, held that multiple actions involving claims by Nicaraguan seamen against U.S. corporations to recover for personal injuries allegedly sustained while serving about U.S. vessels in Nicaraguan territorial waters were governed by Nicaraguan rather than United States law.

Attorney: Daniel D. Pipitone

Construction Litigation

- *City of Burlington, Vt. v. Zurn Industries, Inc.*, 2003 WL 22020581 (2d Cir. 2003), aff'g 2002 WL 32345385 (D.Vt. 2002) -Second Circuit affirmed a decision of the United States District Court for the District of Vermont in favor of boiler supplier defending against City's claim for defective construction of boiler.

Attorneys: Seth Price, Gina Vitiello

- *Foley Co. v. United States*, 11 F. 3d 1032 (Fed. Cir. 1993), aff'g 26 Cl. Ct. 936 (Cl.Ct. 1992) - Obtained Federal Circuit decision affirming summary judgment in favor of contractor's interpretation of how to apply the standard Federal Variation in Estimated Quantities (VEQ) clause found in federal government contracts. When issued, this case became the lead case on interpreting the VEQ clause, and is still considered the lead case some 15 years later.

Attorney: Seth Price

Significant Victories & Reported Decisions, *Continued*

Energy Litigation

- *Braspetro Oil Services Co. v. Modec (USA), Inc.*, Slip Copy, 2007 WL 1425851 (5th Cir. 2007), aff'g. 423 F.Supp.2d 680 - Successfully defended offshore construction company's subsidiary in action by oil company for breach of contract, fraud, civil conspiracy, and unjust enrichment in connection with project to convert large crude oil carrier into oil platform . Court dismissed plaintiff's action on ground that forum selection clause in parties' contract precluded oil company from bringing suit in United States.

Attorneys: Kerry C. Williams, Kevin D. Jewell, Steven J. Knight, Julia Calnek

Equine Litigation

- *Topping v. Commissioner*, T.C. Memo 2007-92 - Significant hobby loss case in which the Tax Court ruled in favor of the taxpayer on all major issues, including the equestrian and design aspects constituted one single activity, the activity was conducted for profit, and the expenses associated with the activity were ordinary, necessary and reasonable.

Attorneys: David D. Aughtry, Hale E. Sheppard

ERISA Litigation

- *Giunta v. Mobil Corp. Employee Severance Plan*, 205 F.Supp.2d 715 (S.D. Tex.2002) - Obtained favorable opinion against participant in employee severance plan challenging denial of severance benefits. Participant not wanting to relocate was not a good reason for resignation, and thus no entitlement to severance warranted.

Attorney: William S. Helfand

- *Schaffer v. Benefit Plan of Exxon Corp.*, 151 F.Supp.2d 799 (S.D. Tex. 2001) - ERISA plan participants challenged Exxon Benefit Plan denial of benefits. District court found that participant's failure to return to work justified termination by plan administrator.

Attorney: William S. Helfand

Labor & Employment Litigation

- *Porter v. Exxon Mobil Corp.*, 246 F.Supp.2d 615 (S.D. Tex.2003) - Successfully defended Exxon Mobil in age discrimination action. Court found non-age based reason for employee's termination. Employee violated business ethics policy prohibiting expense acceleration practices.

Attorney: William S. Helfand

Significant Victories & Reported Decisions, *Continued*

- *Sokolow v. City of League City*, 37 F.Supp.2d 940 (S.D. Tex.1999) - Former city attorney brought Title VII claim alleging religious discrimination and retaliation. Victory where Court found that attorney failed to prove link between offensive comments and city counsel's decision to terminate attorney.

Attorney: William S. Helfand

Tax Litigation

- *Katz v. Commissioner*, T.C. Memo 2008-269. Case regarding exchange of equity swap transaction for a private annuity involving U.S. and foreign parties. IRS sought to tax all capital gain upon exchange and asserted penalties. Tax court found taxpayer not liable for capital gains tax on future annuity amounts and found penalties did not apply. Complete taxpayer victory.
- Attorneys:** David D. Aughtry, Charles E. Hodges, II
- *Browning Ferris Industries, Inc. & Subsidiaries v. United States*, 75 Fed.Cl. 591 (2007) - Court granted motion to dismiss without prejudice in case of first impression involving question of whether tax refund claim filed by company that had previously liquidated for tax purposes was jurisdictionally defective. Ruling enabled taxpayer to refile in another jurisdiction where adverse precedent issued after case was filed is not controlling, notwithstanding government's claim of "forum shopping" and unfair prejudice.
- Attorneys:** Philip Karter, Herbert Odell, Jonathan Prokup
- *Caracci v. Commissioner*, 456 F.3d 444 (5th Cir. 2006). The IRS sought over \$250 million in excise taxes referred to as "intermediate sanctions" under I.R.C. § 4958 against three home-health care agencies and their owners in relation to the transfer of assets and liabilities when the agencies converted from tax-exempt to non-exempt status. The Federal Fifth Circuit Court of Appeals found taxpayers not liable for any excise tax liability. Complete taxpayer victory.
- Attorneys:** David D. Aughtry, Charles E. Hodges, II
- *Vines v. Commissioner*, 126 T.C. 279 (2006) - Multi-million dollar case of first impression involving use of the mark-to-market accounting method by securities traders and the legal standards for granting extensions to file elections under Treas. Reg. § 301.9100-3.
- Attorneys:** David D. Aughtry, Hale E. Sheppard
- *Kohler Co. v. United States*, 468 F.3d 1032 (7th Cir. 2006), aff'g. 387 F. Supp. 2d 921 (E.D. Wis. 2005) - Obtained Seventh Circuit decision affirming summary judgment in favor of taxpayer's claim that participation in Mexican debt-equity swap did not produce \$8 million short-term capital gain.
- Attorneys:** Herbert Odell, Philip Karter, Kevin Johnson

Significant Victories & Reported Decisions, *Continued*

- *Black & Decker Corp. v. United States*, 340 F. Supp. 2d 621 (D. Md. 2004), aff'd in part, rev'd in part and remanded, 436 F.3d 431 (4th Cir. 2006) - Trial counsel for taxpayer claiming \$560 million capital loss from the sale of stock in a contingent liability health care subsidiary. Case settled on Fourth Circuit remand to District Court.
Attorneys: Herbert Odell, Philip Karter, Kevin Johnson
- *U.S. v. Sidley Austin Brown & Wood LLP*, 2004 U.S.T.C ¶ 50,289 (N.D. Ill 2004) - In a "John Doe" summons proceeding, we represented a group of clients of the law firm and persuaded the Court that under FRCP Rule 24(b), merely being involved in an IRS audit and dispute was a sufficient "injury" to our clients to enable them to permissively intervene.
Attorneys: George W. Connelly, Jr., Juan F. Vasquez, Jr.
- *Horton Homes, Inc. v. United States*, 357 F.3d 1209 (11th Cir. 2004) – The Eleventh Circuit invalidated a regulation that would have imposed excise taxes on vehicles that pull manufactured homes. This decision, reversing a decision of the United States District Court for the Middle District of Georgia, had implications for the entire manufactured housing industry.
Attorneys: Linda S. Paine, George W. Hrdlicka, Sidney B. Williams
- *VF Corp. v. Commissioner*, No. 7584-02 (U.S. Tax Court, filed Apr. 19, 2002) - Obtained full IRS concession in Tax Court case involving the question of whether \$59 million cost of providing retail display to retail customers are currently deductible or must be capitalized.
Attorneys: Herbert Odell, Philip Karter, Kevin Johnson
- *International Capital Holding Corp. and Subsidiaries v. Commissioner*, T.C. Memo 2002-109. IRS challenged the deductibility of compensation paid between related companies under I.R.C. § 162. Court found company not liable for any additional income taxes. Complete taxpayer victory and IRS liable for attorneys' fees.
Attorneys: David D. Aughtry, Charles E. Hodges, II
- *Trucks, Inc. v. United States*, 1:96-CV-800 (No. Dist. Ga. 2002). In a jury trial in the Federal District Court for the Northern District of Georgia (Atlanta), the IRS attempted to collect millions from a large trucking company based on attack of their per diem plan for reimbursing drivers for over the road travel expenses. Court issued directed verdict to trucking company at the conclusion of the trial. IRS liable for attorneys' fees.
Attorneys: David D. Aughtry, Charles E. Hodges, II

Significant Victories & Reported Decisions, *Continued*

- *Estate of Lassiter v. Commissioner*, T.C. Memo 2000-324. The IRS attempted to collect millions from the estate of a prominent land owner in Georgia and New York by challenging a disclaimer executed by the family members involving a pre-1982 will. The Tax Court found the disclaimer to be valid. Complete taxpayer victory.
Attorneys: David D. Aughtry, Charles E. Hodges, II
- *Kimberly-Clark Tissue Co. v. United States*, 38 F. Supp. 2d 1028 (E.D. Wis. 1999) - Won summary judgment on issue involving taxpayer's entitlement to an investment tax credit under the "world headquarters" transitional rule of the 1986 Tax Reform Act.
Attorneys: Herbert Odell, Philip Karter
- *U.S. v. Jillson and Nixon*, 99-2 U.S.T.C. ¶ 50,937 (DC-So. Fla. 1999). Rare taxpayer victory in summons enforcement case involving two executives of large installation company.
Attorneys: David D. Aughtry, Charles E. Hodges, II
- *Wickersham v. Commissioner*, T.C. Memo 1999-276 – Obtained favorable ruling from U.S. Tax Court that a man convicted of filing a false income tax return had not committed civil fraud with respect to that return.
Attorney: George W. Connelly, Jr.
- *Emhart Corp. v. United States*, No. 98-1823 (D. Md., filed June 9, 1998) - Obtained favorable settlement for taxpayer seeking to deduct the costs associated with the defense against a hostile takeover attempt.
Attorneys: Herbert Odell, Philip Karter
- *Commissioner v. Estate of Hubert*, 520 U.S. 93 (1997) - U.S. Supreme Court held that estate was not required to reduce its marital and charitable deductions by amount of administration expenses paid from income generated by assets allocated to marital and charitable bequests.
Attorneys: David D. Aughtry, David W. Siegel
- *Emhart Corp. v. Commissioner*, 75 T.C.M. 2231 (1998) - Won taxpayer's claim to a worthless stock deduction for losses attributed to the disposition of a foreign subsidiary
Attorneys: Herbert Odell, Philip Karter
- *Kimberly-Clark Tissue Co. v. United States*, No. 97-0134 (E.D. Wis., filed Feb. 12, 1997) - Obtained favorable settlement before trial for taxpayer seeking to amortize a \$100 million greenmail payment over the term of the standstill agreement provided by a hostile shareholder in exchange for the greenmail payment.
Attorneys: Herbert Odell, Philip Karter

Significant Victories & Reported Decisions, *Continued*

- *VF Corp. v. Commissioner*, No. 23340-95 (U.S. Tax Court, filed Nov. 9, 1995) - Obtained full IRS concession in Tax Court case involving the question of whether taxpayer could accrue and deduct costs for cooperative advertising with its retailers before claims were submitted and payments were made.
Attorney: Herbert Odell
- *Foretravel, Inc. v. Commissioner*, T.C. Memo 1995-495. This decision by the United States Tax Court allowed a family-owned builder of luxury motor homes to deduct or exclude from income more than \$6 million over a two year period. The "win" saved the family company several million dollars in tax, penalties and interest, allowing it to continue building and selling its fine motor coaches.
Attorneys: George W. Connelly, Linda S. Paine
- *U.S. v. Texas Commerce Bank*, 908 F. Supp. 453 (S.D. Tex. 1995) – Obtained favorable decision from U.S. District Court that federal tax lien did not reach interest of beneficiary of discretionary trust.
Attorney: George W. Connelly, Jr.

Other Civil Litigation

- *Jairo Puentes v. Spohn Health Network, et al.*, ___ WL ___ (Tex. App.—Corpus Christi June 11, 2009) – Court of Appeals upheld summary judgment in client's favor, rejecting antitrust and monopoly claims by a doctor who was excluded from participation in a health network.
Attorneys: Kevin Jewell, Kyle Hawes
- *K-2, Inc. v. Fresh Coat, Inc.*, 253 S.W.3d 386 (Tex. App.—Beaumont 2008, pet. filed) – Homeowners filed action against manufacturer of exterior insulation and finish system (EIFS), homebuilder, and independent contractor that installed EIFS, alleging defects in EIFS, negligence, and other claims. The EIFS installer settled with the homebuilder, and both brought indemnity claims against the manufacturer under the Texas Products Liability Act. The court of appeals affirmed in part the judgment in favor of the firm's client, the EIFS installer, rejecting the manufacturer's arguments that component parts of EIFS were not a "product" and that EIFS installer was not a "seller" for purposes of indemnity claim.
Attorney: Kevin Jewell

Significant Victories & Reported Decisions, *Continued*

- *EnviroPower, L.L.C. v. Bear, Stearns & Co., Inc.*, 265 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) – This case involved interpretation of the cap on supersedeas bonds at 50% of a judgment debtor’s “net worth” under the Texas Rules of Appellate Procedure. The trial court ordered judgment debtor to post a \$200,000 supersedeas bond despite the fact that its net worth was negative. The en banc court of appeals reversed, holding that the correct measure of company’s net worth for purposes of setting supersedeas bond is company’s current assets minus current liabilities at time bond is set.
Attorney: Kevin Jewell
- *Kruger v. Peek*, Superior Court of Cobb County, No. 05-1-8991-28, (October 26, 2007) – Awarded \$18 million in wrongful death and civil racketeering action against defendant who murdered estranged wife in hopes of collecting proceeds of wife’s insurance policy.
Attorneys: Gary Freed, David Dreyer, Cheryl Treadwell
- *City of Galveston v. State*, 217 S.W.3d 466 (Tex. 2007) (counsel for amici curiae) - In a seminal decision of first impression, the Supreme Court held the State of Texas could not sue a municipality under the Tort Claims Act absent a waiver of immunity by the municipality.
Attorney: William S. Helfand
- *Howard v. East Texas Baptist University*, 122 S.W.3d 407 (Tex. App. – Texarkana 2003) - Court found in favor of private university that recreational use statute applied and university was not grossly negligent for injury to patron using diving board at swimming pool.
Attorney: William S. Helfand
- *Vu v. ExxonMobil Corp.*, 98 S.W. 3d 318 (Tex. App. – Houston [1st Dist] 2003) - In Exxon Mobil wrongful discharge action, court upheld summary judgment.
Attorney: William S. Helfand
- *Guadalupe-Blanco River Authority v. Pitonyak*, 84 S.W.3d 326 (Tex. App. – Corpus Christie 2002) - Successfully defended river authority in Texas Torts Claim action surrounding condition and maintenance of river saltwater barrier alleged to have caused drowning of boaters.
Attorney: William S. Helfand
- *Southwest Key v. Gil-Perez*, 81 S.W.3d 269 (Tex. 2002) - Obtained Texas Supreme Court decision finding home for boys not negligent where evidence did not support claim that failure to provide protective gear was cause of resident’s injury.
Attorney: William S. Helfand

Significant Victories & Reported Decisions, *Continued*

- *Wal-Mart Stores, Inc. v. Johnson*, 106 S.W.3d 718 (Tex. 2002) - The *Johnson* case clarified Texas law regarding standards for evidence spoliation.
Attorney: Kevin D. Jewell.
- *Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502 (Tex. 2002) - *Rodriguez* resolved conflict in Texas law on the elements of a false imprisonment claim against company that reports suspected crime to the police.
Attorney: Kevin D. Jewell.
- *Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812 (Tex. 2002), and *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934 (Tex. 1998) - *Reece* and *Gonzalez* are two of the most important decisions in Texas premises liability law because they clarify standards of proof relating to circumstantial evidence and constructive notice in premises liability suits.
Attorney: Kevin D. Jewell.
- *Southwest Key Program, Inc. v. Gil-Perez*, 81 S.W.3d 269 (Tex. 2002) - *Southwest Key* was the first Supreme Court decision to address negligence and causation in the context of sports injuries.
Attorney: Kevin D. Jewell.
- *Telthorster v. Tennell*, 92 S.W.3d 457 (Tex. 2002) - The *Telthorster* case decided that the “risk” and “need” factors applicable to evaluating a police officer’s conduct in an emergency response context do not apply to injuries allegedly suffered during an ordinary arrest.
Attorney: Kevin D. Jewell.
- *Belk v. Charlotte-Mecklenburg Bd. Of Ed.*, 269 F.3d 305 (4th Cir. 2001) - The Fourth Circuit (en banc) affirmed district court finding that CMS had reached unitary status. This was the first case ever in which a school district under desegregation orders was involuntarily forced into unitary status.
Attorney: William S. Helfand
- *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711 (Tex. 2001) - *Sturges* is a landmark Texas case establishing the elements of proof applicable to a claim for tortious interference with prospective contracts.
Attorney: Kevin D. Jewell.
- *Wagner v. Bay City, Tex.*, 227 F.3d 316 (5th Cir. 2000) - Victory where Fifth Circuit reversed lower court to find police officers were entitled to qualified immunity, and that they did not act with deliberate indifference to risk of harm for denial of medical care claim.
Attorney: William S. Helfand

Significant Victories & Reported Decisions, *Continued*

- *Estate of Ken Eddie Kruse*, Cause No. 305,529-401, Probate Court No. 1, Harris County, Texas (2000)- Alleged beneficiary of later will claimed his will controlled distribution of large estate. We represented Kruse family in defeating claim and alleged beneficiary took nothing.
Attorney: Wayne Risoli
- *Keck, Mahin & Cate v. National Union*, 20 S.W.3d 692 (Tex. 2000) - Case analyzed the availability and scope of a comparative fault defense in the context of equitable subrogation claim by an excess insurer against a primary insurer and defense counsel.
Attorney: Kevin D. Jewell.
- *Wal-Mart Stores, Inc. v. Lane*, 31 S.W.3d 282 (Tex. App.—Corpus Christi 2000, pet. denied) - *Lane* reversed a multi-million dollar judgment in a gender discrimination and defamation suit.
Attorney: Kevin D. Jewell.
- *Blum v. Lanier*, 997 S.W.2d 259 (Tex. 1999) - *Blum* is a landmark case regarding the standing of litigants, and jurisdiction of courts, where citizens challenge a city's misleading ballot language describing a proposed city charter amendment.
Attorney: Kevin D. Jewell.
- *Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999) - *Black* was the first case in the nation to apply the *Daubert* factors to exclude medical causation testimony on "fibromyalgia."
Attorney: Kevin D. Jewell.
- *Brown v. Blum*, 9 S.W.3d 840 (Tex. App. – Houston [14th Dist] 1999) - Victorious result obtained for voter who filed election contest to end discrimination in city's public employment and contracting. Voter found to have standing after he had moved from city.
Attorney: William S. Helfand
- *Jefferson Associates, Inc. v. Eagle Technical Services, Inc.* Cause No. 93-026430, Harris County, Texas (1997) - NASA incumbent contractor sued winner of \$14 million NASA contract for theft of trade secrets and tortious interference. We represented the winner of the bid. After a seven week trial, the jury ruled in favor of our client and that the plaintiff take nothing.
Attorneys: Wayne Risoli, Christine Kirchner
- *Hammerly Oaks, Inc. v. Edwards*, 958 S.W.2d 387 (Tex. 1997) - *Hammerly Oaks* reaffirmed Texas law regarding application of the "vice principal" doctrine to the availability of exemplary damages against a corporation
Attorney: Kevin D. Jewell.

Significant Victories & Reported Decisions, *Continued*

- *American Industrial Supply Corp. v. International Valve Suppliers Co.*, Cause No. 07-96-0357, Harris County, Texas (1995) - Contractor/supplier claimed that our client supplied faulty valve that caused over \$7 million in damages. Jury ruled that plaintiff take nothing and court ordered that plaintiff pay our attorneys fees.

Attorney: Wayne Risoli

