

## MVP: Mayer Brown's Timothy Bishop

*Law360 (December 14, 2018, 1:47 PM EST)* -- Mayer Brown LLP's Timothy Bishop prevailed in a jurisdictional dispute over the Obama-era Waters of the United States rule taking the matter to the Supreme Court for a definitive solution on the same day he had a second case accepted by the high court for review, making him one of Law360's 2018 Environmental MVPs.

### **ON HIS MOST SIGNIFICANT ACCOMPLISHMENT OF THE YEAR:**

Bishop led a coalition of industry clients in litigating the proper jurisdiction for challenges to the Waters of the United States rule, which pushed to expand the scope of the Clean Water Act. The Supreme Court in January decided the case and said the district courts had jurisdiction. Bishop's accomplishment was figuring out how to get the Supreme Court to weigh in definitively.

"The problem has been that with uncertainty about jurisdiction, parties have been encouraged by courts to file both in the district court and petitions for review in the court of appeals so they don't lose out on the ability to challenge wherever the court decides jurisdiction lies," Bishop said.

If challenges proceed before both the district and appeals court, it makes it difficult to appeal an unfavorable decision. "You asked for it," Bishop said in explanation of what courts can say to parties that pursue both avenues but are unhappy with the result. So, Bishop had to think ahead about how to get the Supreme Court to take the case.

The MVP logo features the letters 'MVP' in a blue serif font. The letter 'V' is partially enclosed by a red circle with an upward-pointing arrow on its right side.

**Timothy Bishop**  
**Mayer Brown**

Bishop decided to keep the National Association of Manufacturers out of the case in the appeals courts to have it intervene in the fight over the court's jurisdiction, Bishop explained.

"That teed up our ability to petition for cert in NAM's name," he said.

He said a final decision on the matter saved his clients time and money.

"It was very satisfying to get this issue finally resolved so our clients know where to go," he said. "And also, to have the court unanimously adopt our position."

***ON HOW HE ENDED UP DOING ENVIRONMENTAL LAW:***

When he was an associate, the then-general counsel of the American Farm Bureau wanted to be more active in the U.S. Supreme Court in the early 1990s and Bishop became involved in that effort, he said.

"From there, I developed expertise under the big environmental statutes and started to be retained by other trade groups and individual companies with environmental issues. [My path] was really the happenstance of developing a relationship with the farm bureau's general counsel early on in my career," Bishop said.

He said environmental matters take up around 50 percent to 60 percent of his time, which is complemented by his other appellate work.

"Trade groups talk to each other," he said. "From starting to work with the Farm Bureau, I began to get hired by other trade groups and other individuals with similar environmental problems."

***ON HIS ADVICE FOR YOUNG ATTORNEYS:***

He said it is important for attorneys new to the profession to gain some sort of specialization.

"Some of these environmental statutes in particular — but other areas of the law, too — are very, very complex and unless you keep up with them every day ... it is difficult," he said. "Clients call you up and expect you to know what is going on."

He said by concentrating in a certain area, an attorney is better able to understand the ins and outs of the issues their clients care about and to respond to those needs.

***ON A CHALLENGE AND MOMENT OF PRIDE FROM THE LAST YEAR:***

The U.S. Supreme Court this year agreed to hear Weyerhaeuser Co.'s bid to overturn a 2016 Fifth Circuit ruling that upheld the U.S. Fish and Wildlife Service's decision to declare 1,500 acres of private property in Louisiana a refuge for an endangered frog species even though the species does not live there. Bishop represented Weyerhaeuser, which won high court review.

But any time the personnel on the Supreme Court changes, it is a factor that must be considered, Bishop said. Justice Anthony Kennedy was on the court when his case over the reach of the Endangered Species Act was granted. By oral arguments, Justice Kennedy had stepped down, making it an eight-justice court.

"You have to sort of switch gears a little bit and think in your preparation for oral argument how to handle that, what difference that makes," he said. "It does give you occasion to think carefully about the nature of your arguments and how to present them."

The Supreme Court was receptive to his approach, overturning the Fifth Circuit's decision and instructing it to further consider a key part of the matter.

He mentioned the Supreme Court had agreed to hear the frog case Jan. 22, the same day the justices decided his Waters of the United States jurisdiction suit.

— *As told to Michael Phillis*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.*