

MVP: Mayer Brown's Evan Tager

By Linda Chiem

Law360 (November 22, 2019, 3:26 PM EST) -- Mayer Brown LLP's Evan Tager aptly helped CSX Transportation Inc. defeat suits involving worker injury liability and federal preemption issues, solidifying his standing as a Washington, D.C., appellate ace and landing him among Law360's 2019 Transportation MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

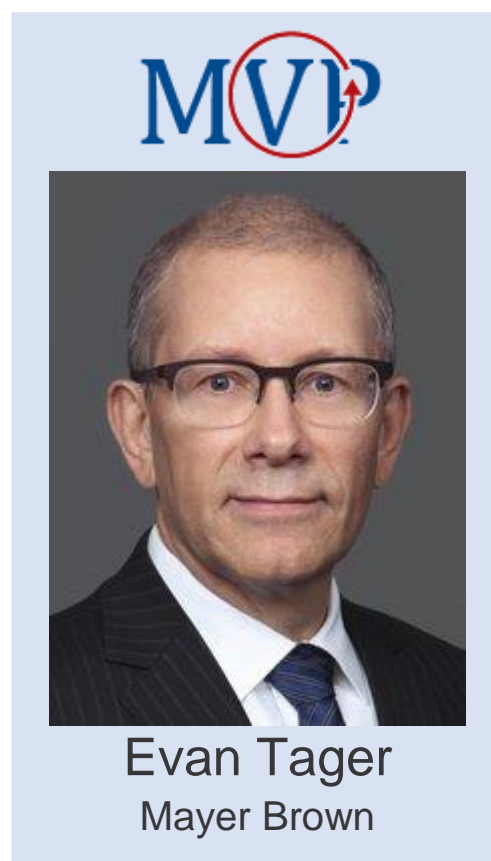
In recent years, the Philadelphia Court of Common Pleas has attracted a growing number of Federal Employers' Liability Act lawsuits against railroads on behalf of workers who lived, worked and were injured elsewhere, partly because of a perception it's a pro-plaintiff venue.

That makes all the more impressive Tager's success in convincing a state appeals court to reject — on grounds of forum non conveniens — a former New York-based rail worker's personal injury suit against Consolidated Rail Corp., which is based in Philadelphia, and CSX Transportation Inc., which is based in Florida.

The July win in *Wright v. Consolidated Rail Corp.* was notable in that the Pennsylvania Superior Court determined the Philadelphia trial court had given plaintiff Samuel Wright undue deference in choosing where to litigate his FELA suit stemming from injuries in a New York rail yard. Before that, the trial court had largely rejected, without much explanation, forum non conveniens motions from railroads in scores of similar injury lawsuits.

"It was a significant accomplishment to get the Superior Court to say, 'just cause Conrail is located in Philadelphia doesn't mean that we throw out our forum non conveniens principles and factors, and the plaintiff gets to stay in Philadelphia for a case that has no connection there,'" Tager told Law360.

Tager said he's hopeful that Wright will "have a deterrent on new filings" and help beat back a series of other cases that are still pending against Conrail, CSX or other railroads.



"It's having a fairly broad impact. I'm not going to say the battle has been won," he said. "It's fought in stages and I think we have won an important stage."

HIS PROUDEST MOMENT THIS YEAR:

Tager and his team scored another win for CSX in June before the Georgia Court of Appeals that Tager described as one of his proudest moments this year because it dealt with the scope of liability for railroads in tort cases from accidents at rail crossings.

CSX Transportation v. Delor was a case with tragic circumstances. Two college students were killed in 2011 when the vehicle they were riding in veered off the road and crashed into a tree after traversing a rail crossing — which had only days before been upgraded with concrete panels — at high speed.

The students' families sued the Georgia Department of Transportation, CSX and its paving subcontractor, C&H Paving Inc., alleging there was inadequate signage and warning devices at the crossing; that the crossing shouldn't have been reopened until additional upgrading had been performed to correct the slope of the crossing; and that CSX was in a "joint enterprise" with GDOT and therefore also liable.

When the case went to the Georgia Court of Appeals, Tager successfully convinced the panel that GDOT, rather than CSX, had responsibility under state law for the warning signs and the decision to reopen the crossing.

"It's a proud moment in the sense that we were able to articulate the point in a way that resonated with the court," Tager told Law360. "So whenever you feel like you're being heard and they get it, you can be proud of the work you did."

WHAT MOTIVATES HIM:

As a member of Mayer Brown's Supreme Court and appellate and class action practice groups, Tager said he taps into his three decades of experience to deftly execute legal strategies concerning interstate commerce, preemption, punitive damages, class certification standards, tort law and additional issues affecting transportation and other industries.

"I love the ability to try to shape the law. I've been very fortunate in my career to be involved in a lot of cutting-edge cases that have themselves made their way into the case books," Tager said. "That is extremely gratifying ... because you know that you did something to move the law or clarify the law. From an intellectual perspective, it doesn't really get much better than that."

Articulating legal arguments in a persuasive way is another thing that drives him, Tager added.

"You're trying to educate the court, you're trying to persuade the court and you're trying to turn the lightbulb on in the judge's head so that the points you're making resonate," he said. "That is a challenge of appellate practice that not everybody appreciates. It is an art."

Meanwhile, Tager said his work in transportation has evolved since his early years representing trucking groups like the American Trucking Associations in constitutional and dormant commerce clause challenges to various state tolling and taxing regulations.

His railroad practice began to grow as more FELA cases streamed in, which fit nicely with his love of tort law, he noted.

"Railroad cases have been the grist for the law-making mill in the area of tort law and they involve very interesting facts so they're just really perfect for a torts case book," Tager said. "I always was fascinated by those railroad cases, so when I had the opportunity to start working for CSX, I really ate it up. It was just what I had always wanted to do."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Tager said it's important for junior attorneys to pay careful attention to edits and comments that senior attorneys are making to their work and to be receptive and responsive to clients, colleagues and the court.

"You sort of learn by doing but you have to be self-aware enough to see why are these changes being made [and to] ask questions if you don't understand, instead of implementing somebody's changes without really thinking about them," Tager said.

But beyond those basic elements of professionalism, Tager explained that lawyers get what they put into the profession, so it's especially important to stay present and continually grow as a lawyer.

"Our careers are time-limited, so you don't want to waste any time by not being fully engaged and putting in the effort," he said.

— *As told to Linda Chiem*

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 2019 MVP winners after reviewing nearly 900 submissions.