

## Transportation Group Of The Year: Mayer Brown

By Linda Chiem

*Law360 (December 22, 2020, 5:04 PM EST)* -- Mayer Brown LLP deftly negotiated unique financing arrangements for major highway improvement and toll road projects, such as the Gilcrease Expressway West in Tulsa, Oklahoma, landing the firm among Law360's Transportation Groups of the Year.

An established transportation litigation, appellate, regulatory and transactional powerhouse, Mayer Brown tapped into its deep bench of attorneys and advisers to meet the economic and legal challenges of the past year, which has been riddled with upheaval and angst as a result of the COVID-19 pandemic.

Mayer Brown has more than 90 lawyers in its projects and infrastructure industry team who steered groundbreaking public-private partnership deals for toll roads, mass transit and other infrastructure projects, and scored court wins for its commercial trucking and new mobility clients, resulting in a robust 2020 for the firm.

"Transportation is a significant area of focus within Mayer Brown," Joe Seliga, co-lead of the firm's government and infrastructure investment practice groups, told Law360. "It really permeates across our practices whether it's transactional or litigation or regulatory."

Infrastructure investment has been a perpetual struggle for state and local governments, but the private sector has long been eager to step in and provide a financial infusion to kickstart major transportation and infrastructure modernization projects. And Mayer Brown has been instrumental in structuring scores of P3 deals for major infrastructure assets in the U.S., including highways and toll roads, rail networks, parking facilities, airports and ports.

In a project that garnered several first-of-its-kind distinctions, Mayer Brown was picked to advise Wells Fargo, the designated lenders' counsel for winning developers of the Oklahoma Turnpike Authority's Gilcrease Expressway West in Tulsa. It was the first build-finance P3 project to be procured in the U.S., the first roadway P3 undertaken in the state of Oklahoma, the first Transportation Infrastructure Finance and Innovation Act loan ever received in Oklahoma and the first use of private activity bonds as interim financing for a build-finance P3 in the U.S., according to Mayer Brown.



"That financing was unique," Stephanie Wagner, a partner in the firm's government transactions and infrastructure investment practice groups, told Law360. "That's the first time that U.S. Department of Transportation private activity bonds were used on a build-finance like this."

The Gilcrease Expressway West is a five-mile, four-lane divided tollway that includes 22 bridges — two of which span the Arkansas River — four major interchanges, and a 10-foot-wide multi-use trail. The project involves a funding partnership between multiple levels of government — the Oklahoma Turnpike Authority, City of Tulsa, Tulsa County, Indian Nations Council of Governments, Oklahoma Department of Transportation, federal government and private investors — in what Mayer Brown described as a novel collaboration that is could serve as a model for similar future projects.

The U.S. DOT announced in May that it would provide an up to a \$120.1 million TIFIA loan for the Gilcrease Expressway, which "put the cherry on top" of the financing structure, Wagner said.

On the litigation front, Mayer Brown is representing the American Trucking Associations in its lawsuit challenging Rhode Island's controversial 2016 plan to install truck-only tolls on its highways to help fund bridge repairs. The ATA and commercial truckers claimed Rhode Island's tolling regime violated the U.S. Constitution's commerce clause by placing a disproportionate burden on out-of-state trucking.

In December 2019, Mayer Brown persuaded a First Circuit panel to reverse a district court's earlier decision dismissing the suit on grounds the Tax Injunction Act barred it from being brought in federal court. The First Circuit agreed with Mayer Brown and the ATA that tolls and other user fees aren't taxes that would be subject to the TIA's jurisdictional limits establishing that legal challenges to state taxes must play out in state court.

"This was really a path-breaking decision because we had always assumed — having practiced in this area of law for years — that tolls are fees," said Evan Tager, a partner in the firm's Supreme Court & Appellate and Class Action practices. "But it took going to the First Circuit and having them piece together all the law we could develop and agree with us that that's how it ought to be characterized for purposes of the Tax Injunction Act."

The case was sent back to the district court, which in July cleared the suit for trial after rejecting Rhode Island's claim that the Intermodal Surface Transportation Efficiency Act of 1991 constituted congressional authorization that shielded states' highway tolls from commerce clause challenges like the one brought by the trucking group.

And as the COVID-19 pandemic obliterated airline revenues in 2020, Mayer Brown played a role in helping airlines raise cash by borrowing against their frequent-flyer programs. Mayer Brown advised Goldman Sachs Lending Partners as the sole structuring agent and lead left arranger and bookrunner, and Goldman Sachs Bank, as administrative agent, on a \$6.8 billion financing for United Airlines.

It consisted of \$3.8 billion of senior secured high-yield bonds and \$3 billion of senior secured institutional term loans to MileagePlus Holdings and Mileage Plus Intellectual Property Assets, direct wholly owned subsidiaries with each of the loans and bonds secured by United's loyalty program, MileagePlus, and guaranteed by United and certain subsidiaries, according to Mayer Brown.

The firm described it as an innovative transaction that involved the contribution of intellectual property of the MileagePlus program to a newly formed offshore subsidiary that was structured to be bankruptcy

remote, which was a co-borrower under the loans and a co-issuer under the bonds with MileagePlus Holdings, and involved a covenant structure that is a hybrid between a securitization and a corporate debt issuance.

--Editing by Peter Rozovsky.

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