

Environmental Group Of The Year: Mayer Brown

By **Peter McGuire**

Law360 (January 26, 2023, 2:02 PM EST) -- Mayer Brown LLP won at trial for a water engineering client in the first bellwether case for victims of the Flint, Michigan, water crisis, beat back a challenge to field burning by a Florida sugar producer and brought a case against California's voter-approved pork farming rules to the U.S. Supreme Court, earning it a place among Law360's 2022 Environmental Groups of the Year.

Mark Ter Molen, a co-leader of the firm's environmental litigation group, led a team of attorneys who camped out in Ann Arbor, Michigan, for six months, defending Veolia North America LLC from claims brought by four Flint children poisoned by lead that leached into the city's water system.

Veolia was accused of falling short of its professional standard of care when they briefly worked on the city's public infrastructure after Flint officials switched the source of its drinking water from Lake Huron to the Flint River, which led to lead contamination. But Mayer Brown attorneys argued that public officials, not Veolia, were responsible for the ensuing water crisis.

A judge declared a mistrial in August, after jurors could not decide liability following two weeks of deliberation and claimed they were reaching a physical and emotional breaking point. Plaintiffs later settled with a co-defendant, civil engineering firm Lockwood Andrews & Newnam Inc., and a judge has adjourned the rescheduled trial indefinitely, Ter Molen told Law360.

Even though the trial ended prematurely, Ter Molen still chalks it up as a significant win that demonstrates the strength of Veolia's liability defense as it prepares for three more trials from victims of the disaster.

"The jury, after hearing evidence for a long time, were not able to decide that our party was liable, they didn't even reach some other significant questions out there like causation or damages," Ter Molen said.

Ter Molen also led a Mayer Brown team that wrapped up an attempted class action against U.S. Sugar Corp. last February.

Plaintiffs accused the company of polluting their homes with toxic ash from controlled burning in sugarcane fields. But after three years of litigation, homeowners dropped the case when U.S. Sugar



produced company data through discovery that showed air quality in the putative class area met safety standards, Ter Molen said.

The suit was part of a concerted attempt from environmental groups to undermine Florida's multibillion-dollar sugarcane industry by eliminating field burning, a practice companies have used for at least 60 years, Mayer Brown attorney Tim Bishop told Law360.

"Part of the importance of defeating the tort claim is that it heads off one of these attempts to make sugar harvesting so expensive as to be impossible," Bishop said.

Bishop, Mayer Brown's leading appellate lawyer, led a group that in March 2022 successfully got the U.S. Supreme Court to hear a case from the National Pork Producers Council and the American Farm Bureau Federation claiming California's law restricting the sale of pork, poultry and beef raised in cramped conditions violates the dormant commerce clause of the U.S. Constitution.

Because California sources 99% of its pork from outside the state, the law breaks the clauses' extraterritoriality doctrine by forcing pork producers elsewhere to invest in bigger enclosures and adopt farming practices they disagree with, Bishop said.

"By dictating what the product has to look like, how it is raised, you are really telling people how they have to raise pigs, but you are also affecting the national market," Bishop said.

The case was designed from the start to reach the high court after it was predictably dismissed from a California federal court and then the Ninth Circuit, Bishop added. The Supreme Court has not examined the dormant commerce clause in years and wanted to take up a case that could influence how states regulate what can and cannot be sold in a politically and socially divided country, he said.

"The court takes very few cases and only those with national importance that go beyond repercussions in the actual argument," Bishop told Law360.

Amid its trial successes, the seven partners and dozen associates of Mayer Brown's environmental group served as the national counsel to 3M Co. and handled thousands of cases against the chemical giant related to per- and polyfluorinated alkyl substances, or PFAS.

In 2022, it began working as litigation counsel to the U.S. Postal Service, defending the agency from challenges to its next generation of delivery vehicles.

"We work hard to identify and advance the issues and aspects of a case that matter most" and bring the best resources to bear, said environmental group co-leader Richard F. Bulger in a statement to Law360. "This helps us work efficiently in the short term but with the long term in mind."

--Editing by Andrew Cohen.