

# THE AMERICAN LAWYER

APRIL 2008

www.americanlawyer.com

ALM

## Dealmakers of the Year



**BARRY MACHLIN** Mayer Brown LLP

Excerpt from the April 2008 edition of *The American Lawyer*.

# The Big Dig

**“A MAN, A PLAN, A CANAL—PANAMA.”** Sure, it’s a palindrome. But it’s also an apt description of this year’s project finance dealmaker, Barry Machlin. He is representing Autoridad del Canal de Panamá (ACP) in its \$5.25 billion expansion of the Panama Canal, a project that could double the transcontinental waterway’s freight capacity and spur the expansion of ports around the world.

At every step of the way, Machlin, 48, and about ten other Mayer Brown lawyers have navigated the ACP’s complex legal underpinnings. As the government agency set up to run the canal after its 1999 transfer from United States control, the ACP is governed by Panamanian constitutional law, national legislation, and its own internal regulations. But it’s run much like a private company, with an independent balance sheet and board of directors. (The chairman of the ACP board is a Cabinet-level position in Panama.)

The ACP is not your typical business in growth mode, though. The board had to take expansion plans to Panama’s president, legislature, and citizens for approval. (More than 70 percent of Panamanians voted for the plan in an October 2006 referendum.) “You couldn’t really have a higher-profile, more politically sensitive transaction than this,” Machlin says.

He got the assignment by responding to a request for proposals from ACP. The Panamanians were seeking experience representing sovereign clients, previous work on large-scale construction projects, and familiarity with the FIDIC (International Federation of Consulting Engineers) Yellow Book, a template used in international construction and engineering contracts. Machlin had experience working for sovereigns going back to his days at White & Case a decade earlier, and his resume includes work on two Indonesian power projects totalling more than \$4 billion. Mayer Brown’s London construction group bolstered the firm’s Yellow Book bona fides, and Machlin and the firm were hired in February 2007.

Early on, Machlin and his team analyzed applicable Panamanian, New York, and British laws concerning about 25 key construction issues. Their major job has been to create the web of contracts integrating responsibility for the tasks that must be completed during the expansion: designing and building locks, constructing and expanding reservoirs, dredging the canal, and widening the waterway’s narrowest point at the Continental

Widening the Panama Canal required navigating a complicated bureaucracy and negotiating a tangle of contracts.

Divide. Just as important, Machlin and his team have laid the groundwork for dispute resolution should anything go wrong during the expansion.

Mayer Brown lawyers have already drafted a contract for the program management company overseeing work across the 50-mile construction site. Rather than hiring a project manager in the traditional mold, the ACP wanted to forge a more collaborative relationship. “It required us to adjust our angle of vision on how we looked at this agreement,” Machlin says. The contract, he says, was structured so the program manager functions more as an extension of the ACP than as a separate, independent firm. In August the ACP approved a program management model in which it will split tasks between its own staff and CH2M Hill Companies, Ltd., an Englewood, Colorado-based program management firm. Next up will be drafting and negotiating a \$3 billion-plus contract to design and build locks on both the Atlantic and Pacific sides of the canal.

Mayer Brown is not the only international firm doing the heavy lifting for ACP. Shearman & Sterling partners Cynthia Urda Kassis and Manuel Orillac have been advising on the financing of the expansion since April 2007. “I’m sure [Machlin and Urda Kassis] know more about Panama Canal law than any Panamanian lawyer outside of the ACP’s in-house lawyers,” says Diego Herrera Dutari, a partner at Galindo, Arias & López, the firm hired as local counsel by Mayer Brown and Shearman. With plans for more than \$3 billion in outside financing for the project, the ACP has been considering offers from multilateral lenders, commercial banks, export credit agencies, and blends of lending sources.

The complexity of the construction and engineering contracts appealed to Machlin, but he says that in the end, being a part of history is the project’s ultimate appeal. “Everybody would like to look back at their career and say they’ve had one or two things that were really amazing,” Machlin says. “This thing will outlive me and possibly the next generation.”

—ROSS TODD

## DEAL IN BRIEF Panama Canal Expansion

CLIENT	Autoridad del Canal de Panamá
VALUE	\$5.25 billion
PROCUREMENT COUNSEL	Mayer Brown
FINANCING COUNSEL	Shearman & Sterling
LOCAL COUNSEL	Galindo, Arias & López



## **WORLDWIDE TEAM, CROSS-DISCIPLINARY APPROACH** **DELIVERING GLOBAL PROJECTS EXCELLENCE.**

Mayer Brown is a first choice firm for complex and innovative projects around the world. One of our many strengths is the highly skilled, cross-disciplinary team we bring to each transaction. We have an unmatched track record and broad industry knowledge, adding value in project finance, infrastructure, construction and engineering transactions globally.

Our 2007-2008 achievements include honors such as:

- Project Finance Team of the Year - International Financial Law Review
- Hidro Xacbal - Latin American Renewables Deal of the Year award - Euromoney/Project Finance Magazine
- Lima Airport Partners - Latin American Project Bond Deal of the Year award - Euromoney/Project Finance Magazine
- Northwest Parkway - North American Transport Deal of the Year award - Euromoney/Project Finance Magazine

Please contact any member of our team listed below to discuss your current project activities and how we can deliver global projects excellence to you.

### **PROJECTS**

**Barry Machlin**

1 312 701 8574

[bmachlin@mayerbrown.com](mailto:bmachlin@mayerbrown.com)

**Ian Coles**

44 20 7246 6205

[icoles@mayerbrown.com](mailto:icoles@mayerbrown.com)

**Stephen Hood**

55 11 2167 4855

[shood@mayerbrown.com](mailto:shood@mayerbrown.com)

### **INFRASTRUCTURE**

**John Schmidt**

1 312 701 8597

[jschmidt@mayerbrown.com](mailto:jschmidt@mayerbrown.com)

**David Narefsky**

1 312 701 7303

[dnarefsky@mayerbrown.com](mailto:dnarefsky@mayerbrown.com)

### **LATIN AMERICA**

**Peter Darrow**

1 212 506 2560

[pdarrow@mayerbrown.com](mailto:pdarrow@mayerbrown.com)

**Doug Doetsch**

1 312 701 7973

[ddoetsch@mayerbrown.com](mailto:ddoetsch@mayerbrown.com)

**James Vickers**

55 11 2167 4860

[jvickers@mayerbrown.com](mailto:jvickers@mayerbrown.com)

### **CONSTRUCTION & ENGINEERING**

**Michael Regan**

44 20 7782 8899

[mregan@mayerbrown.com](mailto:mregan@mayerbrown.com)

**Nick Henchie**

44 20 7782 8857

[nhenchie@mayerbrown.com](mailto:nhenchie@mayerbrown.com)

# MAYER • BROWN

[www.mayerbrown.com](http://www.mayerbrown.com)

Mayer Brown is a global legal services organization comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia.