

Transportation Group Of The Year: Mayer Brown

By **Stan Parker**

Law360, New York (February 13, 2017, 10:00 PM EST) -- The broad footprint of Mayer Brown LLP's transportation team was on display once again in 2016, with its lawyers arranging an innovative public-private partnership for a Texas highway project, scoring litigation wins for industry heavyweights and continuing the firm's work for the iconic Panama Canal Authority, earning it a place among Law360's Practice Groups of the Year.

The practice group got a chance to show off its capabilities last year when it arranged a way for the Texas Department of Transportation to fast-track a needed lane expansion project for the state's Highway 288 by placing the revenue risk and capital expenditure with a private company.

The firm crafted a procurement strategy that allowed the state to find a winning bidder to build 10 miles of toll lanes, rebuild an interchange, operate the highway for 52 years, and even pay \$25.5 million to the state as a concession fee.

"For us, I think it really demonstrates an innovative way to address the transportation and congestion relief needs that many of our metropolitan areas face," Mayer Brown partner Joe Seliga told Law360 in a recent interview.

Seliga, who is based in Chicago, said the critical project would have been pushed years down the road if TxDOT had to depend on public funding. But by assembling a public-private partnership agreement, Mayer Brown attorneys were able to jump-start the project and even create a blueprint that other areas around the country are now looking to.

"I think other jurisdictions are seeing the benefits of this type of structure in order to meet transportation needs, relieve congestion, and extend the ability to develop projects by minimizing the use of public funds to do that," he said.



Few things in the transportation world match the fame and notoriety of the Panama Canal. Last year nearly a decade of the firm's work handling bids and construction contracts for the Panama Canal Authority came to fruition as the \$5.2 billion Panama Canal Expansion Project reached completion, a huge endeavor with construction work spanning 50 miles from the country's Atlantic coast to the Pacific.

"You rarely have an opportunity to be present in the context of an engagement that relates to an asset of national significance to a particular country, and also where the conduct of the work spans the entire country, from end to end," said partner Barry Machlin, who took the lead on the firm's work for the project.

The Panama Canal Authority is continuing to rely on the firm for help in several high-profile disputes brought by the contractor consortium, including arbitration cases before the International Chamber of Commerce.

Mayer Brown also showed its deal-making prowess during 2016 with important work on the Port Authority of Jamaica's Kingston Container Terminal Expansion, a shipping container terminal expansion that will handle increased container shipping traffic from the expanded Panama Canal and serve as a model for future terminals in the island nation.

On the litigation front, Mayer Brown scored critical appellate court wins for rail giant CSX Transportation, and it also secured a key ruling for longtime client the American Trucking Associations in a dispute with the New York State Thruway Authority over the diversion of funds from toll roads.

Mayer Brown partner Evan Tager, who led the litigation team in the New York matter, told Law360 that the firm's work on this case has roots that date back decades to an important U.S. Supreme Court decision in *American Trucking Associations v. Scheiner*, in which the firm convinced the high court to prevent state taxes from falling disproportionately on interstate trucking operations.

"This case is sort of a new generation of cases, brought by a new generation of lawyers at ATA, who came to us, knowing our history with the industry, and asked us to challenge the practice of the New York Thruway Authority of setting tolls high enough to generate tens of millions of dollars' worth of revenue that could then be spent on the canal system," he said.

After a winding litigation path that included a Second Circuit appeal, the Mayer Brown team convinced a federal judge last June that the thruway authority's diversion of funds to the canal system violated the dormant commerce clause of the U.S. Constitution, a principle that keeps states from improperly meddling in interstate trade.

A federal judge granted partial summary judgment to the ATA in June, agreeing with its argument that tolls must be used for services provided to the toll payer and that the Thruway Authority stepped outside its authority when it diverted the money to pay for canals that trucking companies don't use. The case is now in the briefing stage for class certification.

Tager can claim nearly 30 years of experience working at Mayer Brown, and firm partners say that sort of stability is common among attorneys working in the infrastructure practice. Seliga has been there more than 15 years, and Machlin said he's been around for 18.

"One of the things that we talk about in our infrastructure practice is how many of us have practiced together at Mayer Brown for so long," Seliga said. "And I think we do believe that's a real strength of our practice: the continuity that we bring as a team to the matters and the clients we work with."

--Editing by Mark Lebetkin.

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