

Transportation Group Of The Year: Steptoe & Johnson

By **Linda Chiem**

Law360 (February 21, 2019, 3:27 PM EST) -- Steptoe & Johnson LLP relentlessly defended major railroads in high-stakes litigation concerning issues of agency deference and federal preemption, and also helped airlines and energy companies navigate complex accident investigations, landing the firm among Law360's Transportation Groups of the Year.

The firm has established itself as a transportation litigation, appellate and regulatory powerhouse for railroad, motor carrier and aviation clients and is also making a splash navigating compliance issues connected to self-driving cars and drones. Steptoe & Johnson's core transportation group consists of 13 lawyers, but the firm draws on the talents of numerous attorneys firmwide on transportation matters.

"It was quite a good year for our transportation group, [and] I attribute a lot of that to the breadth of the practice," said Linda Stein, a Washington, D.C.-based partner and leader of the firm's transportation practice group.

In one of the group's biggest cases in 2018, Steptoe & Johnson represented BNSF Railway Co. in its bid to have the U.S. Supreme Court determine that compensation for a former employee's lost time following a workplace injury is taxable under the Railroad Retirement Tax Act.

A Steptoe & Johnson team led by partners Alice E. Loughran and Charles G. Cole handled the briefs, but the team tapped veteran litigator Lisa Blatt — who recently left Arnold & Porter to return to Williams & Connolly LLP and is known for arguing some 37 cases before the high court — to handle oral arguments for BNSF last November.

BNSF is seeking to undo the Eighth Circuit's ruling that \$125,000 in damages under the Federal Employers Liability Act, or FELA, given to former BNSF employee Michael Loos for a 2010 knee injury in a Minnesota train yard were not taxable. The railroad had argued that it had already paid \$3,765 to the Internal Revenue Service as Loos' share of payroll taxes, and it wants the award reduced.

The dispute centers on the definition of taxable compensation in two federal statutes that are supposed to work together to fund retirement benefits for railroad employees. The Railroad Retirement Act, or



RRA, created benefits for rail staff, and the Railroad Retirement Tax Act, or RRTA, established the taxes needed to fund the benefits. However, while the RRA includes pay for time lost in its definition of taxable compensation, Congress had twice amended the RRTA to remove references to pay for time lost, according to court documents.

BNSF said the removal of the "time lost" language from the RRTA's definition of compensation in 1975 was not intended to exempt such payments from taxation.

Loughran said the case deals with the intersection of railroad retirement benefits and federal taxes, and it's significant because it concerns questions about statutory interpretation and the amount of deference to administrative agencies, known as the Chevron deference.

"It was a big, enormous achievement to get it in [before the Supreme Court], but getting it in was just one step," Loughran said. "Really to me [oral arguments] turned on the ground that the Eighth Circuit had relied on and that's where the justices were all asking the same question ... why did Congress take out this language?"

Step toe & Johnson's expertise navigating project finance and regulatory hurdles has also benefited clients pursuing major railroad projects. The firm has successfully represented All Aboard Florida — the developers of the Brightline passenger rail line linking Miami to Orlando — in a lawsuit brought by local counties challenging the validity of tax-exempt bonds to fund the project.

Step toe & Johnson has also been tapped by commercial real estate developer Akridge to advise it on the environmental review process for its master development plan for Union Station in Washington, D.C. Akridge's plans call for construction of a 3 million-square-foot, mixed-use development known as Burnham Place.

The firm has also established a burgeoning practice advising transportation clients involved in National Transportation Safety Board accident investigations.

Step toe & Johnson partner Dane Jaques said the firm currently has five active NTSB investigations. One of those is the high-profile investigation into what triggered the April **accident** on Southwest Airlines Flight 1380, in which an engine exploded, sprayed shrapnel that punctured a window and resulted in the death of a passenger. That incident on board a New York to Dallas flight that made its emergency landing in Philadelphia abruptly ended the U.S. aviation industry's longest streak of commercial airline flights without a fatality.

"I think the investigations do tend to be interesting — they're highly technical and very involved and there are a lot of moving parts — and I find it interesting to watch and work with clients who are struggling to find out what happened so accidents in the future can be prevented," Jaques said. "The end result is going to be to improve safety, and I find that part of it very rewarding."

--Additional reporting by Vidya Kauri. Editing by Nicole Bleier.