

BigLaw, Boutiques To Stay Busy With Native American Work

By **Natalie Rodriguez**

Law360, New York (April 08, 2015, 11:23 PM ET) -- While BigLaw and boutiques have clearly marked territories when it comes to Native American law, both are set to cash in on the boom in work expected as tribes expand into new ventures.

Handling the array of everyday legal matters for tribes and for the growing cadre of business-minded members are the relatively small but nimble boutiques like Hobbs Straus Dean & Walker LLP, Galanda Broadman PLLC and Hogen Adams PLLC. These firms tackle everything from offering tribal governance and regulatory counsel, to advising on infrastructure and health care matters.

Meanwhile, Law360 400 heavyweights such as Holland & Knight LLP, Greenberg Traurig LLP, Akin Gump Strauss Hauer & Feld LLP and Faegre Baker Daniels LLP each have dedicated practices backed by armies of mergers and acquisitions, environmental, tax, and other specialized lawyers. They handle the most high-profile or complicated work such as financing a casino or energy project that costs several hundred million dollars, or helping steer big-stakes lawsuits.

“The types of work [boutiques] can do and do well aren't necessarily the types of work we can do efficiently at a big firm,” said Aaron Harkins, a Minneapolis-based partner with Faegre Baker Daniels LLP. “Perhaps on some of the litigation matters, there might be some more competition. But even then, the types of cases we would work on would almost necessarily require a deep bench of people.”

Like litigation, lobbying work also sees the rare tussle among boutiques and larger firms for legal territory, experts say. But the Native American law landscape — which saw an explosion of gaming-fueled growth in the 1990s and early aughts — has otherwise largely settled into a civil, and even symbiotic, splitting of legal work among the two factions.

As the Native American law practice hits a new growth groove, marked by tribes' ever-diverse ventures, this relatively harmonious sharing of the practice space seems set to continue — at least for the near future.

And as legal issues continue to expand — with, to name a few, water rights, marijuana legalization, and renewable energy issues on the horizon — there will be more work to go around.

BigLaw will likely continue to see windfalls from any growth in Native American-related resort and entertainment practices that focus on gambling, while boutiques may see growth in areas more specific to tribal rights, such as environmental and land use, according to Peter Zeughauser, a legal consultant

and founder of the Zeughauser Group.

BigLaw Won't Compete on Price

Several practice heads at the full-service law firms admit that they can't compete with many boutiques on a fee basis for the everyday tribal affairs counseling and Native American member representation work that smaller firms excel at — and many big firms don't want to, they contend.

“When tribes don't have a robust in-house counsel system, boutiques fill that space at a different rate structure able to provide general counsel,” said James Meggesto, the D.C.-based deputy practice leader of Holland & Knight's Indian law group. “It's not economical for a big firm like ours to provide the day-to-day legal work.”

Gabe Galanda, a name partner of the growing, 5-year-old Galanda Broadman, said boutiques like his can more nimbly adapt to price pressures given that there is less overhead to shoulder.

“We see ourselves as filling niches that big firms cannot fill. We increasingly represent tribal individuals rather than tribal governments,” Galanda said, adding that the firm can also often represent tribe members without running into the conflicts — with, say, a developer or energy company — that a larger law firm might hit upon.

Boutiques Rarely Compete in the High-End

Outside of certain litigation and lobbying areas, boutiques can rarely compete with the larger full-service law firms when it comes to major deals work or complex litigation.

“From what I can tell, the bigger firms suck in the higher-end gaming work in general,” said Larry Latourette, a principal at Lateral Link Group LLC. “Some of the big firms that have practices command a lot of that work, most of it actually, because the dollars are just staggering.”

And when it comes to addressing a complicated financial restructuring or high-stakes governmental issue, BigLaw firms with strong Native American practices tend to dominate because group leaders can tap the resources of attorneys in other practices such as tax, labor and environmental.

“I know I can pick up a phone and have a team of lawyers working on it,” Meggesto said.

At Akin Gump, any given day will find 40 to 50 attorneys billing time to Native American matters, noted Don Pongrace, the head of the firm's public law and policy practice.

Full-service firms are gaining traction in the Native American law space, largely due to the rapid growth of tribal economies over the last decade or so — which has exceeded what China could do in the same period, according to Pongrace.

“Economic diversification” is the favored buzz term among Native American practice heads and what most are betting will keep their legal fees flowing in the coming years.

After gaming proved to not be recession-proof, tribes began focusing on diversifying into different businesses, from agriculture and renewable energy to e-commerce and ecotourism, noted Jennifer Weddle, co-chair of Greenberg Traurig's Native American practice.

Harkins said, "A number of tribes have made the decision they need to plan and diversify more, rather than just focusing on gaming. I've got several deals going on involved with nongaming acquisitions of existing businesses and things like that."

In addition to boosting tribes' legal needs, the flourishing of new industries and diversified deals work puts financial players on the hunt for a firm that understands the intricacies of striking a deal with a sovereign tribe.

"In the '80s and '90s, most of our clients were tribes, and over time that has changed ... Now, we also represent other entities doing business in Indian Country, such as banks," said Skip Durocher, co-chair of Dorsey & Whitney LLP's Native American practice.

The economic diversification also opens up new space for litigation. "Tribal clients will continue to face various controversies involving money, be it gaming proceeds, business profits, tax dollars or individual income. ... [And] as tribal clients continue to ascend economically and otherwise, disputes will only increase, as will the magnitude of those disputes," noted Gabe Galanda, a name partner with Galanda Broadman.

There has also been a return to some of the core issues of Native American law, such as land boundary disputes and cases where tribes are actively seeking to protect land, water and fishing resources, according to Rob Roy Smith, a partner with Kilpatrick Townsend & Stockton LLP's Native American practice.

Symbiotic Relations Flourish

At Faegre, a good share of the firm's work comes from boutiques and in-house counsel who have day-to-day relationships with tribes and who turn to the firm for specialized counsel on everything from working on or restructuring a financing, to labor and litigation issues, according to Harkins.

Similarly, "we actually have good working relationships with lots of smaller boutique firms, and we are intentionally not trying to replace them," said Townsend Hyatt, leader of Orrick Herrington & Sutcliffe LLP's Indian tribal finance group.

Galanda added that his boutique has regularly worked with larger law firms.

"We certainly collaborate with a lot of firms that would be styled as competitors. We have hired them, and we have been hired by them," Galanda said.

Some experts noted that the number of players elbowing for room on the field has been weeded out since the heydays of the 1990s and early aughts. As the market has matured, some full-service firms that once dabbled in the area have seen their stand-alone Native American practices disappear into a small component of another practice, such as gaming.

And these days, it's not necessarily the easiest field for firms to break into.

"You have people who do it and people who don't. It would be tough to break in," Latourette said.

Native American practice comprises a tight-knit community where lawyers tend to flow freely between

in-house and private practices. Dorsey, for one, has seen a number of its former lawyers jump over to work as in-house counsel for tribes.

“Since that time, our role has really been primarily a special counsel role where tribes come to us for our specific expertise that they don't have the resources to handle themselves,” said Mary J. Streitz, co-chair of Dorsey’s Native American practice.

--Editing by Edrienne Su.

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