

LATIN LAWYER MAGAZINE

THE BUSINESS LAW MAGAZINE FOR LATIN AMERICA

PRO BONO FLOURISHING IN TOUGH TIMES



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BUCKING THE TREND

The US legal industry is in crisis, so how is it that Curtis, Mallet-Prevost, Colt & Mosle is still hiring, asks Rosie Cresswell

Big law, as a business model, has a tarnished reputation these days. Not a week has gone by yet in 2009 without law firm layoffs in the US, and nigh on 7,000 lawyers have been made redundant at the US and UK's top 400 firms since the crisis began. Revenues at the US's top 100 firms are 5 per cent down on average, with demand down 7 per cent. The mantra of growth, particularly as a measurement of success, has taken a serious beating.

It would appear, however, that no one told Curtis, Mallet-Prevost, Colt & Mosle LLP. Revenue is up 13.5 per cent, and profits per partner up 11 per cent, crossing the US\$1 million line for the first time, in the bleakest of environments. And the firm is hiring: since this uncertain year began, the New York firm has brought five new partners into its Latin American team – two arbitration partners, a litigator and two corporate lawyers.

There are further plans for growth, with the firm on the hunt for corporate partners in London, and more. “We are going to get bigger, not smaller,” says George Kahale III, Curtis's chairman and the most prominent partner in the Latin American group.

Kahale is troubled by the legal industry's present situation – the worst he has ever seen it – but in terms of the firm, he acknowledges: “It's nice to be in a hiring mode now, it's a good market.”

Several factors put Curtis in such an enviable position today, not least “a big dose of good luck”, as Kahale puts it. The firm happens to be very active in areas that are growing rather than contracting – notably its Latin American and international arbitration practices. “Consequently, we are looking to increase headcount in those areas,” explains Kahale.

The Latin American practice group now has about 40 lawyers in New York – its centre – Washington, DC, Houston, Mexico City and London, although lawyers do not do Latin American work exclusively.

Curtis's central strategy for Latin America, and indeed elsewhere, is to represent states and state energy companies. “It allows us to stand out and generate new work on top of our traditional transactional work in the private sector,” says Kahale.

Curtis is standing strong while others stumble because of this strategy's ability to attract what Kahale calls “mega transactions”, which he considers the key to success for international firms today. “Those firms that are able to attract the mega transactions or the large litigations or arbitrations tend to succeed, but those that cannot will find it more difficult to compete with the high overhead of today's big firm practice,” he explains. Failure to do that, he believes, is why much of the legal profession is suffering.

“What has changed over the years in our Latin American practice is the same thing that has changed in the overall practice of law on this level, namely, the magnitude of the transactions,” says Kahale. A firm can easily work on transactions that bring in fees between US\$25,000 and US\$50,000. “But you spend a great deal of time and effort on them and it can take 10 [transactions] to get US\$250,000 – that's not even a small part of the fee for a mega transaction,” he notes. With today's overheads so high, particularly salaries (although Kahale notes that is changing now for the first time), it's very hard to make profit with smaller transactions which cannot take high fees. “That is a big part of what happened to the large firms,” he says. “They got used to the endless stream of transactions which were not fee sensitive. When these dried up, they got caught with hundreds of lawyers and overheads.”

Curtis's state-focused model is clearly paying dividends in Latin America, where state-owned energy companies are generating considerable big-ticket work right now. Indeed, other firms have acknowledged the present value of such clients in Latin America, including Thompson & Knight, which has long represented Brazil's state-owned oil company, Petrobras, and is profiting from the recent successes of Colombia's Ecopetrol. “There has been an imbalance in the access to funds, technology and services between the big global oil companies – the Exxons of the world – and the national oil companies,” said Thompson & Knight's Pablo Ferrante in an interview with *LATINLAWYER* late last year. “We predicted a few years ago that this would begin to balance out as the national oil companies started to invest in order to build expertise within their teams.” Foley Hoag LLP is another firm pursuing governments as clients – it is presently representing Ecuador in its default on bonds worth US\$3.2 billion.

For Curtis the strategy is nothing new. It has been advising state companies in Latin America's oil and power sectors for many years. It was one of the first US firms to open an office in Mexico, in 1991, which went on to do extensive infrastructure and project finance work for state oil company Pemex and state power company Comisión Federal de Electricidad (CFE) during the 1990s. They continue to be primary, profitable sources of business – the firm is representing Pemex in the designing and drafting of new service contracts for oil exploration and production after last year's energy reform in Mexico, the first time private companies have been allowed into the sector since 1938.



Christian
Leathley

The Latin American practice group began attracting serious attention five years ago, when it won the Venezuelan government and its state oil company, PDVSA, as clients. Curtis was chosen because of its reputation for representing similar clients, and through “strong recommendations from persons familiar with our work in other countries,” says Kahale.

Today Venezuela is the group’s most high-profile client. The country’s president Hugo Chávez may be controversial – he is a self-declared enemy of the private sector – but he certainly provides the mega transactions Kahale believes are so important, all in the name of 21st century socialism.

So far this year, Chávez has announced plans to take control of the petrochemicals sector and oil field services, nationalised Banco Santander’s operations, seized plants from Pfizer and Cargill, and more. Restructuring and renegotiating contracts, and in some cases arbitration, will presumably ensue. Last year, Curtis assisted PDVSA in successfully restructuring the Orinoco oil belt financings worth US\$4 billion after heavy oil projects there were taken under government control (and so winning **LATINLAWYER**’s Restructuring Deal of the Year for 2008). The firm is tied up in very high-profile arbitrations filed against the state by companies that refused to negotiate, ConocoPhillips and ExxonMobil. Exxon’s case famously took the parties to London’s High Court to dispute assets worth US\$12 billion last year. And all this is just a snapshot of the work having Venezuela as a client generates.

Arbitration work is a natural extension of representing states, and the firm has increased its focus on the area in the past few years – a move that bodes well for the firm in the current climate given that arbitration work tends to rise in times of downturn. Curtis is betting on this happening this time round, and recruiting accordingly. In April it made two additions to its international arbitration group, hiring Christian Leathley from Clifford Chance LLP’s New York office and former ICSID counsel Claudia Frutos-Peterson. Last year the firm promoted three new arbitration partners.

Both of the newest hires have significant experience in Latin American work – which will be useful, given that a sizeable portion of the rise in investor-state arbitration in the past decade has come out of Latin America. Leathley’s dispute resolution practice has a particular focus on the region, while Mexican-born (and Washington-based) Frutos-Peterson has acted as secretary to ICSID tribunals in many disputes involving Latin American countries.

Leathley believes the firm is taking a very sensible approach in deepening what he sees as an already very strong practice. (It must feel like a comfortable home for Leathley, given the fact that Clifford Chance has recently seen an exodus in its own dispute practice.) Just how much work the arbitration group will get directly from the crisis remains to be seen. “The world of arbitration is still on a watching brief as to how the number of arbitrations will be affected by the economic crisis. It will be interesting to see how that litigation spike will manifest itself in terms of arbitration,” Leathley notes.

Just how Curtis’s state-led strategy plays out in arbitration work has been carefully considered. In investor-state arbitration it only ever represents the state, while in the commercial arbitration sphere, the

firm can, and does, represent both state-owned and private entities, without the governmental focus in investment treaty arbitration matters creating conflicts of interest.

“Investment and commercial arbitration are of a very different nature,” explains Kahale. “Commercial arbitration doesn’t tend to involve the state. It’s more private, and issues tend to centre on the facts of a particular case. The investor-state arbitration that has emerged in the last decade is a very different type of practice. It’s not easy to be on both sides.” Curtis went on the state side because it has represented states for decades. Leathley, aware of the long-running debate over whether to stick to one side in investor-state dispute work, thinks it’s a very clever strategy which “allows the firm to commit”.

The business of politics

LATINLAWYER recently hosted a round table for lawyers in Venezuela who expressed doubt over the future of President Chávez’s administration, even with the recent referendum allowing him to stand for the presidency indefinitely. Whether PDVSA has sufficient expertise and cash left to continue to function and fund the country’s social programmes amid lower oil prices has also been questioned, as has the lifespan of a strategy that sees the government nationalising suppliers to which PDVSA owes money. Meanwhile, the country’s executive is proposing a new law to



George Kahale

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bring arbitration under its own supervision – removing more of the little protection afforded to private investors which will only further discourage investment in the country.

Some might question the sustainability of representing such a client. But Kahale says having Venezuela on its books won’t damage the Latin American practice’s relations with the commercial sector in the region. “I don’t spend any time thinking about those things,” says Kahale. “Politics is not my business.”

But making business from governments is, and while it certainly appears to be generating income now, does that broader strategy mean

the group risks isolation at some point? Again, Kahale doesn't think so. "The strategy of representing states and state-owned companies is not only sustainable for Latin America, for the past several decades it has proven to be a successful business plan internationally," he says.

He points out that the firm has a long-established reputation in the region. "We have always had that focus in Latin America

from way before I got here – it goes back decades," says Kahale, who joined the firm 35 years ago. "When I came out of law school very few firms were international at that time, Curtis was one of the few. We have always had a lot of Latin American attorneys in the firm – not just as trainees."

But other recent hires suggests the Latin American practice group may be wary of being pigeonholed, or at least is keen not to let its traditional transaction work in the region slip. In the past six months, the firm hired energy and infrastructure lawyer Roger Stark, who acted in the first limited recourse financing in

Panama's electricity sector, and on some of the first privately financed toll roads in Mexico and Brazil. James Alford has also joined as a corporate and finance partner, where he works on cross-border transactions with Latin American clients; both lawyers are based in Washington, DC.

Also on the corporate side, Santiago Corcuera joined the firm's Mexico City office as partner at the end of 2007. Bringing Corcuera on board was a deliberate move to boost the firm's profile in the country's corporate and financial sector. He brought with him long-standing commercial clients (including Mexican finance, beverage and energy companies) and local knowledge, having been in the market for 25 years. (He was previously a founding partner of Kuri-Breña, Sánchez Ugarte, Corcuera y Aznar, now Kuri Breña, Sánchez Ugarte y Aznar.) Today he is the most senior partner in the Mexico City office; its founder Ricardo Díez is now based in Houston, doing mostly energy work.

Corcuera's take on the strategy of representing states shows that in corporate work the situation is necessarily less clear cut. He accepts it has been the core of the Mexico practice and is realistic about the associated drawbacks. "It goes with the job. If you have such a huge client that is so important you have to pay the price," says Corcuera. "We don't want conflict – our standards are very high. Of course we have lost opportunities. Some clients have asked me if I can help with a public bid with Pemex and I say no."

But he is a proponent of diversification. While Corcuera admits Pemex is "big enough" as a client, he is also mindful of the firm putting all its eggs in one basket. "As one partner put it, Curtis Mexico has been the victim of its own great success," he says. By this, Corcuera means the strategy of servicing state-owned clients has limited the firm's visibility when compared to other New York firms with Mexico offices or large, Mexican firms. "We have been more successful than them, but less visible," he notes.

To remedy that, he's keen on business development and eager to promote the firm's capabilities in other fields. "If I have a good client I try to offer them service in other areas, or try to get more clients," he notes, adding that he thinks Curtis is more visible in Mexico today. "If you go around the legal market in Mexico you will see they recognise us more now, we are more active in networks and actual practice."

Work being done by the corporate department may seem small next to the mega transactions the firm does for Pemex or PDVSA, but Corcuera takes a long-term view. "In comparison with huge clients, they might not look so important income wise, but little by little we generate more work and therefore more visibility. We are seen by other lawyers and securities agents, and that will give us more work if we handle matters properly." This may seem to collide with Kahale's mega-deal strategy for survival, but the economics of the New York and Mexico City offices are also rather different.

To broaden its scope, the Mexico City office is not limited to Mexican work, but rather is integrated into the wider Latin American practice. Upon joining the firm, Corcuera was impressed at the office's position within the Latin American practice, particularly with the partners in the New York and Houston offices. "My office is beside the videoconference room and it's used all day," he says. "The Latin American work is carried out from Mexico and New York, but the client doesn't know from where the advice is being given. Last year I handled a transaction where one of our clients sold a majority stake in a Colombian company. The Mexico office acted as coordinator of this transaction as New York firms usually would lead deals in Latin America. The difference is that we are trained in New York law but we speak Spanish as natives and have a similar culture. The transaction goes more smoothly and people feel more confident."

"The knowledge and experience of the lawyers in Mexico in international arbitrations and mega transactions all relate to Latin American experience," says Kahale. "These are very transferable skills." The team has plenty of project finance work on its CV, for example, because of oil companies requiring that kind of service. What's more, Mexico City rates are considerably lower than New York rates. "That is a factor," recognises Corcuera. "We are just as efficient, more compatible with the culture, and we cost less."

Because of Curtis's policy not to release information on the work it is doing for clients, it's difficult to know just how active the Latin American group is in the private sector right now. It's certainly hard to imagine there are many mega transactions to be found, although beyond its reputation for state work the firm is well known for its strength in bankruptcy work and, of course, has good experience in project finance transactions.

Corcuera for one admits now is not the best time to be focusing on corporate or financial work. "I have to say I'm very fortunate the transactions I'm doing have not fallen through the cracks. Since December deals have still gone through, but we have to be alert at these interesting times and if private equity is not going to be the huge area of business I wanted or expected then we have to keep our eyes wide open." Indeed, Corcuera himself is applying the firm's strategy to his own practice and getting involved in arbitration, acting as an expert witness in Mexican law with respect to joint ventures.

Any business strategy worth its salt has risks, but with the world as it is today, perhaps now is not the time to worry about typecasting; after all, few law firms are privileged enough to be able to pick and choose the type of work they are doing. That Curtis can grow at such times implies there are some risks worth taking.



Santiago Corcuera