Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Foley & Lardner's Jim Tynion

Law360, New York (January 10, 2012, 2:28 PM ET) -- James T. Tynion III is a partner in Foley & Lardner LLP's New York office, where he co-chairs the firm's energy industry practice. He is former chairman of the firm's project and infrastructure finance team and the finance and financial institutions practice. For 30 years he has represented clients in all aspects of limited recourse project financings, in the fields of energy and other infrastructure sectors.

Q: What is the most challenging project you have worked on and what made it challenging?

A: In 1989, as a ninth-year associate, I was asked to first-chair a transaction representing a syndicate of non-U.S. banks acting as lenders for a triple project financing of wind energy projects in Southern California that was structured as three separate leveraged leases.

The challenging aspect for a young attorney was dealing with many issues of first impression within the energy project finance world (including an 80-mile privately owned transmission line) and the dynamics of a transaction with five separate parties at interest for every issue, six separate major U.S. law firms, and the politics and dynamics of dealing with my nine clients, trying to act with one voice.

We were working under very strict time deadlines, and the pressure was intense. Complicating everything was, of course, the fact that this was my semester to be considered for promotion to partner at my law firm, and I had a 2-year-old son and a pregnant wife at the time.

The rewarding aspects of this complex transaction were the collegiality that developed among the various parties with the common goal to get the deal finished and the group brainstorming responses to challenging tax, energy regulatory and debt equity negotiating issues throughout the deal. While I saw this as a great opportunity to watch and learn from senior partners at other law firms, I quickly realized that it was I who was being watched by the various mid-level and junior-level associates sitting around the table week after week.

I was grateful for the opportunity to teach these associates from several other law firms and to be taught and led by the more senior attorneys on the deal. To this day, many of those attorneys are friends and colleagues at different law firms and energy companies, and many stories continue to be told about the famous Mojave 89-90 wind projects financings. (P.S. I did make partner that winter!)

Q: What aspects of your practice area are in need of reform and why?

A: I believe the project finance and renewable energy communities should try to get together to develop more standardized documentation for many aspects of smaller and midsize solar energy, wind energy and biomass projects. It is a shame that we continue to use forms developed over 20 years for $500 million gas-fired power plants to document the construction and financing of a $5 million solar installation.

It would be wonderful if some trade association or bar association committee was able to discuss these items openly as well as to discuss how traditional real estate concerns and issues can be mitigated and treated in efficient ways to help promote the development of renewable energy projects across the country.

Q: What is an important issue relevant to your practice area and why?

A: For those of us in the renewable energy legal practice, it continues to be distracting and a shame that the political forces are driving the conversation away from the development of responsible alternatives to traditional energy sources. It is so clear to reasonably minded adults that the nation needs to upgrade its electrical infrastructure and provide for alternative energy in the mix for the next generation and using renewable energy as a political football is not in the best interests of this nation going forward.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Anyone who has worked with or had an opportunity to know Edwin Feo, formerly a partner at Milbank Tweed in Los Angeles would be very lucky indeed. Ed Feo was a young partner representing one of the financiers on the Mojave 89-90 project I described above, and I have worked with him on several financings (and refinancings) and acquisitions of wind energy and solar energy projects and companies over the past 20 years.

Ed is and has been a great role model for young lawyers who can see in action what client service is, what being a gentleman in adverse negotiations situations is and how one can work very very hard over many, many hours every single week year in and year out and yet still have a sense of humor, humility, perspective, and an active outside set of interests (Ed is an avid sailor).

Another way that Ed has served as a role model for me is his interest in the individuals who are in the industry, not just lawyers, but the bankers and developers and he acts as a confidential networking source for jobs and business opportunities within the industry. Ed recently left Milbank Tweed to move to the client side as a principal in U.S. Renewables Group but he continues to be an active networker and informal business adviser to many in the United States renewable energy sector.

Q: What is a mistake you made early in your career and what did you learn from it?

A: As a young associate, I was sent by my New York law firm to work as a foreign intern at a international Japanese law firm in Tokyo, where we regularly represented syndicates of Japanese banks and Japanese leasing companies in major international equipment financings and project financings of aircraft, ships and power plants, etc. During one negotiation session led by my Japanese bengoshi (barrister) partner with many of our clients represented in the room there was an impasse as to a particular legal issue in the documentation.

During a pause in the discussion, I piped up with what I knew to be at the time the correct legal answer, analysis and support. Being very pleased with myself with my freshman speech at the conference table, I looked around to astonished faces and surprise universally. What I did not understand was the pause in the conversation was actually very much a part of the negotiation and it was neither my place to offer this advice in open conference nor had it been reviewed and approved by my partner.

It therefore looked to the client group as though I was contradicting my boss in public. Of course, I was unaware of the context that was going on mostly in Japanese around me. It was made very clear to me by the partner and by some of my friends among the client group afterwards that I had spoken out of turn and it was seen as quite unprofessional and unseemly for a junior attorney to do so in that situation.

The lesson I learned was to try to understand in advance the necessary cadence and balance of running discussions and negotiations in open face-to-face meetings (and now mostly via conference calls). What I have learned over the years is to make sure that I am aware and my client is aware and my law firm colleagues are aware of what is expected to occur during discussions and negotiations, how important it is to keep the conversation flowing without confronting or challenging the positions of the other parties so as to force them into an uncomfortable or embarrassing corner, thereby keeping the conversation fluid and moving all parties toward an agreeable solution to the issue at hand. This has served me well in my practice in the 28 years since I put my foot in my mouth that very, very long day in Japan in 1983.