



Brian K. Nichols Shareholder

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Related Practices

Energy, Environment and Natural Resources

Energy

Utilities and Infrastructure

Labor, Employment and Benefits

Litigation

Professional Liability

Torts / Personal Injury

Native American Law

Economic Development

Tribal Law and Courts

Related Industries

Business in Indian Country

Educational Services and Institutions

Energy

Manufacturing

Mining

Railroads

OVERVIEW

Brian Nichols' practice is primarily in federal Indian law and litigation, including tribal courts, with focuses on energy, natural resources, transportation and employment.

His experience includes:

- Lead counsel in trials in federal, state, and tribal courts.
- Lead negotiator in labor negotiations.
- Advising and negotiating for clients with tribal nations.
- Consulting with clients doing or considering business on or with tribal nations.

Brian has advised clients including BHP Billiton, Union Pacific Railroad, BNSF Railway Company, Peabody Energy, Western Refining and Giant Four Corners, City of Farmington, Encana, WPX Energy, Continental Resources, and Saddle Butte Pipeline, along with many smaller companies having Indian law issues.

As a member of the Navajo Nation Bar, Brian regularly advises clients regarding Navajo law and represents clients in Navajo courts and agencies.

Best Lawyers in America[®] selected Brian as 2018 Native American Law "Lawyer of the Year" in Albuquerque. Brian has achieved nationwide recognition in Native American Law from *Chambers USA*. As reported by *Chambers*, "Brian Nichols handles all aspects of federal Native American law and litigation, including energy work, natural resources, transportation and employment issues. He regularly appears in state, federal and tribal courts. Interviewees find him to be 'impressive,' explaining that he is 'a lawyer's lawyer. He is almost academic in his knowledge.'" Additionally, Brian has received an AV[®] peer review rating in *Martindale-Hubbell*, the highest rating possible, and listed as a Southwest Rising Star by *Southwest Super Lawyers*[®]. He is recognized as a Star by *Benchmark Litigation, Labor & Employment*.

Before joining Modrall Sperling, Brian clerked for the Honorable Pamela B. Minzner of the New Mexico Supreme Court and the Honorable Fredrick J. Martone of the U. S. District Court for the District of Arizona. He serves as Co-Chair of the Native American Law practice group and is a former member of the firm's Executive Committee.

Education

Georgia State University, J.D., 2003, *summa cum laude*. Editorial Board, Georgia State University Law



Review

Earlham College, B.A. in Economics, 1993, College and Departmental Honors, *Phi Beta Kappa*, Charles Stinneford Award for Excellence in Economics

Bar Admissions

New Mexico

U.S. District Court for the District of New Mexico

U.S. Court of Appeals for the Tenth Circuit

Arizona

The Navajo Nation

EXPERIENCE

Indian Law, Energy & Transportation

- Advises Union Pacific Railroad and other clients in several matters related to tribal nations.
- Team member drafting amicus brief in the United States Supreme Court for the Association of American Railroads in *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, No. 13-1496: http://www.scotusblog.com/wp-content/uploads/2015/09/amicus_railroads.pdf
- Lead counsel in trial before the Navajo Nation Labor Commission, *Nez v. BHP Billiton*, NNLC 2015-016, 2015-2016. Decision forthcoming.
- Lead counsel in appeal to Navajo Supreme Court, *Morris v. Giant Four Corners, Inc.*, No. SC-CV-13-15. 2014 to present. Decision forthcoming.
- Defended transportation, gas industry and coal industry clients against personal injury and premise liability claims in tribal courts.
- Represents businesses in the courts and agencies of the Navajo Nation. Common matters include employment (the Navajo Preference in Employment Act, NPEA); property (such as the Navajo Nation Civil Trespass Act); vendor preferences and procurement (the Navajo Business Opportunity Act, NBOA); and worker health and safety (such as the Navajo Occupational Safety and Health Act, NOSHA).
- Assists businesses doing or considering commerce with the Navajo Nation and other tribal nations.

General Litigation & Experience

- Lead counsel in federal court bench trial, *Garcia v. City of Farmington*, No. 12-cv-00383. Trial in 2016, decision forthcoming.
- Lead negotiator in labor negotiations for BHP Billiton subsidiaries in New Mexico, 2011 to 2013.
- Participated in the defense of Psilos and Ares Management in consolidated Fraud Against Taxpayers Act claims, *New Mexico ex rel. Foy v. Vanderbilt*, Nos. D-101-CV-2008-01895 & D-101-CV-2009-01189; including an interlocutory appeal resulting in the New Mexico Supreme Court's ruling on retroactivity in *Foy v. Austin Capital Management*, 2015-NMSC-025, 355 P.3d 1.
- Participated in the defense of SunCal affiliated entities and Westland Development Co., Inc. in



eight lawsuits related to a corporate merger. The claims included: insider trading (10b-5 claims), proxy misrepresentation (14a claims), breach of fiduciary duty, appraisal under the dissenting shareholder statute and the registration of shares under Article VIII of the Uniform Commercial Code. *Lane v. Page*, 581 F. Supp. 2d 1094 (D. N.M. 2008); *Lane v. Page*, 649 F. Supp.2d 1256 (D. N.M. 2009); *Wilde v. Westland Development Co., Inc.*, 2010-NMCA-085, 148 N.M. 627, 241 P.3d 628; *Rael v. Page*, 2009-NMCA-123, 147 N.M. 306, 222 P.3d 678;

- Defended several lawsuits involving fatal and other serious accidents. Clients include BNSF Railway Company, Amtrak, TA Operating, LLC (Petro Shopping Center) and BHP Billiton.

Published Decisions & Representative Cases

- In a 2013 unpublished decision of the Navajo Supreme Court, *Jones v. BHP Billiton*, No. SC-CV-07-11, the Court affirmed the decision of the Navajo Labor Commission. The Commission found that BHP Navajo Coal Company had just cause to fire an employee who had undisclosed conflicts of interest. The employee, a Navajo medicine man, contended that his termination was religious discrimination. By contrast, both the Commission and the Supreme Court found that the mine accepted and promoted Navajo culture, and valued the employee's expertise in that area.
- The Navajo Supreme Court reiterated its test for jurisdiction, holding that the Nation may have jurisdiction over a party which no longer has contacts with the Nation. The Court also held that its District Court should determine aspects of the case which, by contract, were to be determined by a Texas court, due to the Nation's interests in real property. *Neptune Leasing, Inc. v. Mountain States Petroleum Corp., et al.*, No. SC-CV-24-10 (Nav. Sup Ct. May 13, 2013).
- The Navajo Supreme Court determined that the Nation's tribal courts must determine jurisdiction over non-Indians at the outset of a case. The court must make factual findings to determine whether it has jurisdiction under both Navajo Law and Federal Law. *Doe BF vs. Diocese of Gallup*, No. SC-CV-06-10 (Nav. Sup. Ct. Sept. 9, 2011).
- Defended Albuquerque Public Schools in a civil rights claim related to special education. The Court of Appeals determined that educators did not violate a student's constitutional rights by placing him in a "time-out room" in response to his dangerous, disruptive behavior. *See Couture v. Albuquerque Public Schools*, 535 F.3d 1243 (10th Cir. 2008).
- Represented Westland Development Co., Inc. and SunCal affiliated entities in federal securities law claims. In two orders, the District Court dismissed in part a proxy claim (14a claim). Previously, the Court denied injunctive relief to the Plaintiff, effectively allowing a corporate merger. *See Lane v. Page*, 581 F. Supp. 2d 1094 (D. N.M. 2008) & 649 F. Supp.2d 1256 (D. N.M. 2009).
- Represented Westland Development Co., Inc. in litigation related to a proposed merger. The District Court had dismissed the plaintiff's claims, holding in part that the appraisal claim created by the dissenting shareholder statute was her exclusive remedy. The Court of Appeals reversed. *See Rael v. Page*, 147 N.M. 306, 222 P.3d 678.
- Represented Bank of New York/Mellon and Westland Development Co., Inc. against claims of fraud and breach of fiduciary duty. In a dispute regarding ownership of Westland's shares, the Court of Appeals affirmed dismissal in part because the claims were time barred, and in part because Westland complied with Article VIII of the Uniform Commercial Code regarding securities. *See Saavedra Wilde v. Westland Development Co., Inc.*, 148 N.M. 627, 241 P.3d 628.

ACTIVITIES



- Navajo Bar Association, Rules Committee
- Planned Parenthood of the Rocky Mountains, Board of Directors
- Pro Bono Legal Representation for members of the Navajo Nation
- Modrall Sperling Executive Committee, 2014-2017

NEWS & ARTICLES

News

Chambers USA Honors 19 Modrall Sperling Attorneys

Posted on April 25, 2019 By Daniel Schueler

Super Lawyers® Names 31 Modrall Sperling Attorneys to 2019 List; Four Named Top 25 New Mexico Super Lawyers

Posted on April 15, 2019 By Daniel Schueler

Benchmark Litigation Labor & Employment Recognizes Modrall Sperling

Posted on January 11, 2019 By Alexandra Schexnayder

Modrall Sperling Attorneys Recognized by Best Lawyers® 2019

Posted on August 15, 2018 By Daniel Schueler

Super Lawyers Names 32 Modrall Sperling Attorneys to 2018 List; Four Named Top 25 New Mexico Super Lawyers

Posted on April 23, 2018 By Alexandra Schexnayder

Modrall Sperling Wins on Directed Verdict

Posted on October 10, 2017 By Nicole Creaturo

Modrall Sperling Attorneys, Firm Nationally Ranked in Native American Law

Posted on July 12, 2017 By Alexandra Schexnayder

Articles

Appearing in Tribal Court

February 13, 2017

By Brian K. Nichols

The ADEA Does Not Abrogate Tribal Sovereign Immunity: Eleventh Circuit Confirms Recent Trend

December 2, 2016

By Robin E. James and Brian K. Nichols

Recent Cases Confirm Sovereign Immunity

August 30, 2016

By Brian K. Nichols

Tribal Nations, CERCLA Litigation, and Sovereign Immunity

May 26, 2016

By Brian K. Nichols

Indian Law Cases Pending Before the Supreme Court Worth Following

March 18, 2016



By Brian K. Nichols, Lynn H. Slade and Sarah M. Stevenson

Tribal Employment Preference Laws

July 25, 2014

By Brian K. Nichols

Jurisdiction for Injuries Arising at Tribal Casinos: The Importance of Clear Dispute Resolution Terms

January 2, 2014

By Brian K. Nichols

The Navajo Supreme Court Highlights Importance of Jurisdiction to Tribal Courts

September 29, 2013

By Brian K. Nichols

Salt River Project v. Lee Navajo Nation Held to Waive Regulation of Employment

April 20, 2013

By Brian K. Nichols

Tribal Employment Laws: Legal and Cultural Considerations

March 28, 2013

By Brian K. Nichols

DISCOURSE

Presentations

- The Robert's Court Indian Law Jurisprudence: The First Ten Years (Panel Member), *2016 Indian Law Conference*, sponsored by the Federal Bar Association, April 7, 2016, Scottsdale, Arizona
- Native American/Developer Partnering, Sustainable Mineral and Energy Development in In Indian Country (Panel Member), *Utah Spring Bar Convention*, sponsored by the Utah State Bar Association, March 12, 2016, St. George, Utah
- **Tribal Employment Preference Laws**, *Tribal Employment Rights & Law*, sponsored by Law Seminars International, Washington State Convention Center, Seattle, Washington, July 14, 2014, Brian K. Nichols
- Indian Tribes & Discrimination Issues, *Tribal Employment Rights & Law*, sponsored by Law Seminars International, Prior Lake, Minnesota, April 28–29, 2014, Brian K. Nichols and Paul W. Spruhan, Assistant Attorney General, Navajo Nation Department of Justice
- Indian Tribes & Discrimination Issues, *Tribal Employment Rights & Law*, sponsored by Law Seminars International, Cabazon, California, October 28-29, 2013, Brian K. Nichols, Keith C. Smith, Smith, Shellenberger & Salazar, LLC, Westminster, CO and Paul W. Spruhan, Assistant Attorney General, Navajo Nation Dept. of Justice, Window Rock, AZ
- Tribal Employment Preferences and Employee Protection Laws, *Special Institute on "National Resources Development on Indian Lands*, The Rocky Mountain Mineral Law Foundation, Albuquerque, NM, Paper 13A, March 4, 2011, Brian K. Nichols

HONORS

- *Chambers USA Directories of America's Leading Lawyers for Business*, recognized Nationwide



in Native American Law, 2016-2018; in New Mexico, 2015-present; and in Labor & Employment, 2017-present

- *Best Lawyers* 2018 Native American Law “Lawyer of the Year” in Albuquerque
- *Best Lawyers in America*® in Native American Law, 2014-present
- *Martindale-Hubbell AV*® Preeminent, Peer Review Rated
- *Southwest Super Lawyers*® (derived from a lawyer survey), 2018; Southwest Rising Star, 2012-2014
- *Benchmark Litigation Labor & Employment, The Definitive Guide to America’s Leading Labor & Employment Litigators*, West Star, 2018-present