

# Daily Journal

www.dailyjournal.com

MONDAY, JULY 16, 2018

## Working Backward

*Newport Beach boutique Klein & Wilson relies on a unique approach for litigation success.*

By Melanie Brisbon  
Daily Journal Staff Writer

Attorneys at Klein & Wilson have won more than 90 percent of the cases they have taken to trial, according to the firm's estimates.

The seven-attorney law firm in Newport Beach has a unique approach to litigation.

"We look at the whole case and we usually prepare what we call a litigation analysis memorandum at the outset of the case," said Gerald A. Klein, the managing partner and co-founder. "We understand what the client's goals are. We see where we want to end up and work backwards from there."

With this memorandum, Klein & Wilson gathers the facts of each case. Then attorneys prepare a step-by-step road map, including a litigation theme and strategy based on the client's goals.

### Profile

"By plotting out this strategy and knowing where the client wants to end up, we can save money on unnecessary discovery," Klein said.

Mark B. Wilson, also a founding partner, said, "Once this road map is finished, we and the client have a very good understanding about where this case is going, whether this case should be pursued, whether it should be settled, et cetera. Having this road map done early on in the case is so beneficial."

Mapping out the litigation strategy helps create predictability in fees and case outcomes, attorneys said. Klein & Wilson has won many multimillion-dollar cases with this technique, recovering nearly \$200 million for clients and earning bet-the-company defense verdicts, attorneys said.

The founding partners met nearly 30 years ago when Wilson applied for a job at Brutoco & Klein, a boutique law firm in Orange County that focused on business disputes, where Klein was a name partner. Cummins & White acquired Brutoco & Klein in 1990. Klein and Wilson eventually left Cummins & White LLP, later starting their namesake firm in 1994.

Business litigation and legal malpractice are Klein & Wilson's focus areas. Partnership and shareholder disputes,



From left, Gerald Klein, Mark Wilson and Michael LeBoff of Klein & Wilson.

Courtesy of Klein & Wilson

**Once this road map is finished, we and the client have a very good understanding about where this case is going, whether this case should be pursued whether it should be settled et cetera. Having this road map done early on in the case is so beneficial.**

— Mark B. Wilson, co-founding partner

trade secrets issues, insurance litigation and premises liability are some of the types of business litigation matters the firm has handled. As for legal malpractice, Klein & Wilson typically represents individuals and entities suing former lawyers on issues related to over-billing, ethics, breach of fee agreements, negligence and conflicts of interest.

This year, the firm won a \$1.3 million binding arbitration award in a legal malpractice case against a Southern California law firm. Klein & Wilson's client alleged its former law firm failed to competently advise it in employment matters.

Klein & Wilson represented software company Affinitec Corp. in a breach of contract action it brought against Siemens, a European technology developer. Affinitec sued Siemens for damages stemming from Siemens' alleged failure to disclose the names of its new customers and pay invoices. Klein & Wilson won a \$5.7 million jury verdict in the case against Siemens. *Affinitec v. Siemens*, 790903 (Orange Super. Ct., filed Feb. 25, 1998).

Siemens appealed but appellate jus-

tices largely affirmed the lower court's ruling, reversing only the award of pre-judgment interest on one cause of action.

Despite the firm's success, it faces the challenge of getting big bet-the-company cases.

"I think there is still this bias or maybe a fear on the part of a general counsel that they will be questioned if they use a smaller firm," Klein said. "To overcome that, I just handled a legal malpractice case for a Fortune 500 company.

"We got an outstanding result and the client was thrilled and they said, 'We will use you in other matters,'" he added.

The firm has also experienced growth within the last four years. Klein & Wilson bought a new building, which it now occupies, and added five lawyers. Among them are associates Amy H. Nguyen, Lupe Gonzalez, Brian Michael Kelly and Gordon Dunn III. Attorney Michael S. LeBoff joined in 2016 and is now a partner. LeBoff, formerly with Callahan & Blaine in Santa Ana, met Klein and Wilson when he was their opposing counsel.

"I knew they were good attorneys," LeBoff said. "They had very strong

reputations in the community. For me, joining was an opportunity to go to a firm that was in growth mode and be part of that growth."

"It's a small firm, but we have very complex, sophisticated cases," he added.

The firm's growth brought new challenges, attorneys said.

"The challenges that I have are quite new because I am supervising attorneys when I did not have that role before — figuring out what to delegate and make sure that the lawyers who are doing the work are doing a great job at it," Wilson said. "I had to recognize that I can't do it all."

Klein and Wilson are also training LeBoff on aspects of running the law firm.

"I think you have to plan for succession, especially if you are a small firm," Klein said. "My partner [Wilson] is seven years younger than me, and he will take on the mantle of managing partner after I'm gone."

"We're also training a third partner [LeBoff] who joined us on the business of law because you have to understand the business of law to succeed," he added.

Heather L. Rosing, shareholder and chief financial officer of Klinedinst PC, became acquainted with Klein & Wilson when she defended a case they filed. Attorneys at Klein & Wilson are "excellent lawyers who provide outstanding representation to their clients," she said.

"Mr. Klein in particular has an approach that I would commend to all attorneys — a firm and skilled advocate while at the same time highly professional and civil," Rosing said. "Mr. Klein and I certainly had our disagreements in the case, but we also had open and productive dialogue about the matter, the merits, and possible resolution."

A partner at Hinshaw & Culbertson LLP, John W. Sheller, has opposed Klein & Wilson on multiple matters. Attorneys at the firm are "in the top 10 percent of firms doing complex business litigation, complex tort litigation," Sheller said.

"They make their intentions clear and they do what they say they'll do," he said. "At the right time, they'll lay their cards on the table. They'll listen and take my arguments into account."