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How Wilkinson Stekloff Built a Trial Firm Without Timesheets

By Ross Todd
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This is the first in a two-part series about Wilkinson Stekloff.

Take cases poised to go to trial and avoid billing by the hour.

That was the simple-sounding, yet radical-for-Big-Law philosophy **Beth Wilkinson** set out with when she left **Paul, Weiss, Rifkind, Wharton & Garrison** a little over a decade ago to found the firm initially known as **Wilkinson Walsh + Eskovitz,** with litigators drawn from **Munger, Tolles & Olson**, **Covington & Burling** and **Kirkland & Ellis**.

Ten years on, the business model remains a constant although the name on the door has changed to **Wilkinson Stekloff**–taking on the name of the last of the six remaining co-founders besides Wilkinson, former Covington special counsel and assistant federal public defender **Brian Stekloff**.

Litigation Daily sat down in recent weeks with Wilkinson, Stekloff and two of the firm's more junior partners **Moira Penza** and **Kosta Stojilkovic** to discuss how the absence of the billable hour has shaped the trial-focused

Courtesy photos

Beth Wilkinson, left, and Brian Stekloff, right, with Wilkinson Stekloff.

firm, which has grown to nearly 50 lawyers, including 14 partners, and more than 30 staff. The firm's clients have included household names such as the National Football League, Cargill, the NCAA and Microsoft Corp.

Wilkinson noted that the staff headcount does not include a billing department. "We don't ever fight with clients over time entries, which you hear about constantly," she said. "When I was at Paul Weiss, I probably spent 20% of my time on time sheets and interacting with clients over the bills and writing off time."

"Nobody likes doing it. In-house people don't like it and law firm partners don't like doing it," she said. Agreeing to a flat fee structure upfront, at times involving a potential success fee for the firm, Wilkinson said, gives clients and their CFOs a level of certainty that can make the uncertainty of a potential high-stakes trial perhaps a bit easier to stomach. The fee structure has also led to another figure that would be enviable in Big Law: A 100% realization rate.

Stekloff and Wilkinson also said that the model provides them with more opportunities to train the next generation of trial lawyers. Where at their prior Big Law homes, talented associates could be pulled away from trial teams for other time-intensive assignments, here the whole team is aligned and geared toward trying cases.

"Clients, as you know, count heads," said Wilkinson of typical billable arrangements. "They count to see how many people are in the room."

"But because we do these alternative fixed-fees, once they decide what the financial arrangement is, we never discuss that again. And whether there are three people in the room or eight people in the room, all they care about is they have the best and the brightest there who are focused on their trial."

Stekloff added that those arrangements allow the firm to staff cases in a way that gets more junior lawyers and staff a role at trial. That's harder to do, he said, in a setting where billable hours and realization rates are front-and-center. "Even for our associates and paralegals, they're not the ones standing up in court. But that experience that they have just going to trial and knowing how trials work and seeing litigation through to trial is so valuable," he said.

Staying (Relatively) Small While Managing Big Cases

Antitrust and mass torts—two of the areas where Wilkinson Stekloff trial teams have been the busiest over the past decade—are known for being document- and discovery-intensive assignments. They're the sorts of assignments where Big Law often thrives. Part of the firm's success on these types of assignments, Wilkinson and Stekloff said, is its willingness and ability to effectively team with larger firms. They pointed to examples of assignments they've handled alongside **Arnold & Porter** for Altria, alongside Covington for the NFL, as well as the firm's trial representation of Microsoft in the Federal Trade Commission's challenge to the company's $69 billion acquisition of "Call of Duty" maker Activision Blizzard. The Microsoft case saw **Weil, Gotshal & Manges**, **Sidley Austin** and **Skadden, Arps, Slate, Meagher & Flom** all handling defense-side roles.

Wilkinson says it's the rare exception when she and her colleagues are acting as the sole counsel for a client in a matter. She thinks that helps clients avoid "ruff[ling] too many feathers" when bringing Wilkinson Stekloff in to work alongside larger firms. "Nobody thinks we're going to steal their long-term counseling, regulatory or corporate work. We don't do that. So. it's easier to partner [with us]," she said.

What Has Changed?

Wilkinson estimated that about 75% of the firm's caseload in the years immediately

after its founding involved matters where its lawyers were brought on in the months before a trial. Now, she and Stekloff say, in the majority of cases, the firm is brought in closer to the onset of a dispute.

Part of that shift comes from the firm's experience during the pandemic, where the dearth of trial work forced partners to look for ways to stay involved in clients' strategic priorities. Still, some of that has come from the value clients have placed on trial skills coming out of the pandemic.

"We're at least there more at the outset of cases to be identifying the trial themes and the trial strategies from early on in the case, so that no matter who's executing on discovery, the trial themes are carrying through," Stekloff said. "We think for clients, generally, that's better."

As to the lawyers who were part of the firm's founding who are no longer around, Wilkinson said that part of the changes involved "everybody figuring out what they really wanted to do." Wilkinson pointed out that **Alexandra Walsh**, in particular, who left Paul Weiss alongside her at the firm's founding, realized during the pandemic she wanted to practice on the plaintiff-side.

"It sounds great to start a boutique, and it has been for us," Wilkinson said. "I think Brian and I feel like we could never go back to Big Law."

Stekloff said that the lack of trials during the pandemic was a test, but that the firm came through with its culture intact. He said the biggest challenges of the first decade were in line with those anyone would face starting a small business. "It wasn't the lawyering, which is always the challenge. That wasn't the thing that was stressing me out," he said. "It was more, 'Where are we going to have an office?' and 'How are we going to get all of our employees' health care?' and, "Oh, we need a 401(k).'"

Stekloff and Wilkinson say the goal of the second decade is to establish an institutional reputation that will live on in the next generation of trial lawyers at the firm. Still, Stekloff said that the business model has inherent challenges, since repeat business isn't guaranteed. Bet-the-company cases hopefully only come along every so often.

"People don't want to hire us, and even clients who love us, who are very loyal to us, hope that they don't have a lot of those cases," he said. "Usually, clients do find ways to come back to us, because they end up having more problems than they wish."

"We don't wish that upon them, but it happens."

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