



Profile: Marjorie Heinrich

Former defense attorney says respect for the other side goes a long way in settling cases

BY STEPHEN ELLISON

There may not be many better routes to becoming a successful plaintiffs' lawyer than the one Marjorie Heinrich traveled. A senior trial attorney with The Dolan Law Firm, Heinrich spent the better part of two decades working for insurance defense firms. In doing so, she not only became versed in the formulaic modus operandi of these corporate defenders, but she also experienced a revelation of sorts.

"About two to three years into doing defense work," Heinrich recalled, "I went to my boss one day and said, 'How can these juries believe these experts given the fact that we hire them over and over?' He turned to me and said, 'Look how long it took you to figure it out.'"

Even after that invaluable lesson, Heinrich continued at the defense firm, making partner after 10 years. But she wasn't always happy about the way she achieved success.

"I tried many cases against plaintiffs' lawyers who fell into traps, where we as defense attorneys used these so-called experts – courtroom experts who knew every trick of the trade," Heinrich recalled. "I figured out that if you're not at the top of your game as a plaintiff's attorney, if you fall into those traps, you're going to get unfortunate results for your clients.

"That left a horrible taste in my mouth," she added. "I thought to myself after winning a case, 'This wasn't the right result. I won, but it wasn't the right result.' I started thinking that if my opponent had just done something differently, it may have come out better for them."

After 10 more unfulfilling years as in-house counsel at two different insurance companies, Heinrich made the leap



Heinrich

to the other side, her sights set on eluding the traps of defense lawyers.

Heinrich counts herself fortunate to have made an almost instant impact at the Dolan firm, achieving sev-

eral large settlements during her first four years. Now the head of Dolan's East Bay offices, she gives two reasons for her success. First, she makes a practice of treating her opponents with dignity and respect – she doesn't talk down to them and she always acknowledges their expertise.

"They appreciate the fact that I 'get' who they are," she said, "as opposed to the plaintiff's attorney who opens negotiations with 'my muscles are bigger than yours, and I'm going to push you around.' And in turn, they tend to treat me more fairly."

One of those adversaries, defense attorney Karyne Ghantous, couldn't agree more.

"She understood what I was up against, and that made for intelligent conversations," Ghantous said of Heinrich. "She wasn't one of those attorneys who bluff or posture; she was completely true. It made me want to go to bat for her."

The second reason for her success, Heinrich says, is working with Chris Dolan, who she called "the most brilliant lawyer I've met, bar none." On her first day with the firm, Dolan did something that Heinrich will never forget. At Dolan's request, she joined her new boss at an after-hours meeting with a potential

client. Dolan spent three hours outlining and detailing reasons why the potential client didn't have a case.

"He did it for me," Heinrich said. "What he was showing me was how you go about talking to a potential client who maybe doesn't have a case and how you take the time to explain to him what the law is and what the facts are. By doing that, you're going to be a better lawyer, and (the potential client) is never going to forget that. While you just told them they didn't have a case, they'll feel like you gave them your undivided attention for free, and they won't forget you, and they'll refer everyone they know to you in the future."

Added Heinrich: "It was the most brilliant meeting I'd ever had."

Student becomes teacher

Her own success assured, Heinrich now takes on the role of mentor with younger associates at the firm.

"I was very fortunate to connect with Marjorie in my first job," said Ethan Wimert, who has been with Dolan for about two years and has worked closely with Heinrich. "She's helped me move along at a much quicker pace than I anticipated. It's nice to know there are lawyers out there that have the patience and take the time to help out younger lawyers.

"The best advice I've ever gotten from her, in terms of developing a style, is to be yourself and don't try to emulate successful attorneys you see," Wimert said. "And do your homework."

Wimert, too, mentioned Heinrich's invaluable experience as a defense attorney, calling it a distinct advantage not only for himself, but also for nearly everyone involved with the case – associate counsel, opposing counsel and especially clients.



Heinrich, in a very Dolan-esque mentoring moment, made a point of showing Wimert how to approach phone calls to open negotiations with insurance claims representatives. As he sat in Heinrich's office listening to her make those calls, he said it gave him a sense of how the conversation should go. "It sort of demystified the whole process," Wimert said. "I learned to listen to where they (the defense) are coming from, and then be straightforward and tell them what I need." Precisely the lesson Heinrich was shooting for.

"I tell younger folks you have to realize the people on the other side have a ton of experience," she said. "They know more about claims and oftentimes know more about the law than the average plaintiff attorney. So you're foolhardy to talk down to them or suggest that you know more than them. You should assume they know a lot about negotiating claims, case law, jury instructions. They may know more than you do." With that approach, Heinrich has succeeded in settling some difficult cases, many pre-litigation.

Memorable cases

One particularly memorable elder abuse case she teamed with Dolan on resulted in a near million-dollar settlement. The client, a World War II veteran who had undergone heart bypass surgery, developed decubitus ulcers, or bedsores, on his heels during his recovery. Over time, and because of a series of errors made by the hospital and nursing care facility, the bedsores became gangrenous, leading to the amputation of his left leg. Heinrich and Dolan negotiated a \$900,000 settlement.

"To be able to obtain a beautiful result for an older gentleman and his

wonderful family was just an incredible and unbelievable experience for me," she said. "It was one of those things where you can't believe you were able to do that."

Another memorable case, involving a client who slipped and fell and struck his head in the kitchen of a restaurant, was more complex. The client, a computer field technician, developed debilitating migraine headaches to the point where he was unable to work, Heinrich said. Despite the difficulty of proving the severity of her client's head trauma and its chronic effects, she was able to obtain a \$1.5 million settlement.

"That's one I'm pretty proud of," she said, "being able to convince my adversary that they didn't have the evidence to combat our claim."

Indeed, Heinrich's persuasiveness has been key to her resolving cases before they even reach the point of litigation. While her insurance-defense background comes into play, this particular skill also involves a sort of sixth sense about a case and the person sitting across the table.

"If you figure out that the opposing claim specialist really is on the up and up, really is going to treat your client fairly, you can settle cases pre-litigation," Heinrich said. "It's a fine line of cherry picking which cases you can't get resolved (that way) because maybe you're not dealing with a sophisticated enough claims person or you're dealing with a carrier who's notorious for offering the low end of the spectrum."

Like mother like daughter?

Heinrich's path into law was carved with a little help from another shrewd negotiator – her mother. At UC Berkeley, Heinrich was a political science major

and – more important to her at the time – a star on the Golden Bears water polo team. Before she graduated, her mother posed the inevitable question: What are you going to do with your life?

"I didn't have the foggiest idea," Heinrich recalled. "She decided that I would make a really good lawyer."

After Heinrich dismissed the idea, her mother took matters into her own hands. "She decided she would go to law school. My mother hadn't even gone to college, but she took what was called the baby bar and talked her way into law school down in San Diego.

That compelled Heinrich to enroll at Golden Gate University School of Law. "Sure enough, it worked," she said. "I thought, 'this is really cool; I'm going to go to law school.' To this day, she takes credit for me becoming a lawyer."

Despite her harried schedule, Heinrich still finds time to satisfy her zest for fitness, adventure and the arts. She loves to hike and run and swim, and she enjoys listening to jazz. She travels as much as time allows.

On the subject of offering advice: "I'm not the brightest light bulb in the chandelier – I've never been the best student, never been the best lawyer, never been the best at anything. But because of hard work, I've been able to excel. Your opponent may be smarter than you, but if you outwork them, you're going to get the better result.



Ellison

"Be gracious, respectful, agree to disagree," she continued. "And work hard at your craft, and you will succeed."

Stephen Ellison is a freelance writer based in San Jose, Calif. Contact him at ssjellison@aol.com.

