

## How A 'Risky' Move Fueled Kobre & Kim's Win Over Phillips 66

By **Cara Salvatore**

*Law360 (September 5, 2025, 1:56 PM EDT)* -- When Kobre & Kim was representing Propel Fuels in a California state court trial alleging Phillips 66 stole the startup's intellectual property during due diligence for an acquisition, the firm led off with three key witnesses from Propel.

Then it threw a curveball: quickly calling an adverse witness from the oil giant.

It's "a bit of a risky proposition to interrupt your own witnesses," Kobre & Kim's Michael Ng told Law360 in an interview. "You can't control it in the same way, but that lets the jury see the full picture at a relatively early phase."

The move appeared to pay off. The jury in October 2024 ruled that Phillips 66 had wilfully misappropriated certain trade secrets and awarded Propel \$605 million — and then persuaded a judge to add nearly \$200 million more, which will be augmented by tens of millions in interest.

Going into the trial, Propel's executives felt strongly that Phillips 66 had abused the information it received while courting Propel for an acquisition so that Phillips could expand into a new business area. But convincing a jury took a huge amount of work and a five-week trial with half-day trial sessions, four expert witnesses for the plaintiff and six defense experts, Ng and fellow trial leader Daniel Zaheer said.

The adverse witness, Nick Dombalis, was in charge of Phillips' due diligence during the period from 2017 to 2018 when the oil giant was interested in acquiring Propel — and then during a period when Propel said internal emails revealed Phillips had decided to move ahead alone, but was still allegedly stringing Propel along and communicating that the deal was close to closing.

When Phillips 66 actually did break off the deal, Dombalis was the very same person put in charge of the new business unit, Ng and Zaheer said. That made him an absolutely critical witness and allowed Kobre & Kim's trial team to quickly bring up a key theme: Phillips 66 had chosen to conduct due diligence for the deal without the use of a clean team — insiders who would permanently sequester Propel's corporate information from Phillips'.

Dombalis' testimony appeared to hit the mark for Propel, Ng said.

"I think Mr. Dombalis comes across as sort of an affable person; he didn't start off in a defensive posture," Ng said. However, through questioning, the Kobre team was able "to show that this was an extremely unusual way of running the due diligence and then building the business right afterward."

Dombalis' testimony established that Phillips had used a clean team in other deals before, but not in the Propel deal, Ng said. And Dombalis admitted he kept Propel information stored on his computer even as he was working on building a rival business unit for Phillips — in fact, kept the information "until the day he retired from the company," Ng said.

"The story that they were telling each other internally about this deal and the story they were telling Propel were very different," Ng said.

The choice not to use a clean team became a telling act not just for the jury but for Judge Michael Markman, who heard and decided on the extensive post-jury litigation over exemplary damages, in which Propel requested another \$1.2 billion.

Judge Markman told the parties at a multi-hour hearing on exemplary damages in March that the lack of a clean team is what bothered him the most. He then highlighted it in his eventual order awarding \$195 million in exemplary damages — three times what Propel would have reaped from the deal if it had gone through.

"No efforts were taken to achieve any separation between the Propel deal team and the 'go it alone' team at all," Judge Markman wrote in July. He later added tens of millions of dollars in interest.

During the original trial, Phillips may have also hurt itself with storytelling that just wasn't plausible, Zaheer said.

"The story the other side put on at opening was our client was a small company that didn't really have much to teach" a giant like Phillips, he said. But the falsity of that story was apparent immediately with the first three witnesses, Zaheer said. Those were Propel's three executives: Koichi Kurisu, the chief operating officer, with a financial background; Chris LaPlante, the company's marketing whiz; and Rob Elam, the founder.

"As soon as our client witnesses got up on the stand, the jury could see that there was a lot there," Zaheer said, "really deep market learning, market sophistication. ... The jury could see this wasn't an obvious business proposition; it was difficult and complex."

And he said Phillips acknowledged as much in its own emails and documents from the time, even if it said the opposite later during litigation.

"The reality was that in their contemporaneous internal documents they were falling over themselves to laud the quality of Propel's information," Zaheer said, with "statements like, 'Propel gives us a 10-year head start,' which is an extraordinary statement that I don't think Phillips could walk away from."

The Kobre team also presented powerful graphics: side-by-side comparisons of Phillips' statements at one time or to one set of people and at another time or to another set of people. The visuals displayed in a simple, stark way what Propel believed were contradictions in the testimony.

These comparisons showed that the business Phillips was contemplating with Propel as a partner "was exactly the same ... beat for beat" as the one it went ahead with alone later on, Ng said.

"Visually we were able to set that up by taking some of the planning documents that they had worked

on with Propel and putting them up in front of the jury side by side, and showing that what they had afterwards looked exactly the same."

In Judge Markman's courtroom, the jury was also allowed to submit questions for each witness. This arrangement made a difference, Ng and Zaheer said. Sometimes juries can bring out powerful answers on questions that would be off limits or less powerful coming from the lawyers during standard cross-examination time.

Dombalis "was actually asked by the jury whether they used [Propel's] information in the planning of the decision to launch the new business. And in response to that jury question, he admitted that they had," Ng said. "The jury-posed question put a bow on everything."

--Editing by Marygrace Anderson.