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CLOCK STOPPERS

Running a practice free from the billable hour

(From left) Andy Goldman, Melissa Widen, Shayna Cook and Tarek Ismail of Goldman Ismail Tomaselli Brennan & Baum. Photos by Lisa Predko.

A group of friends who started Goldman Ismail are **NATURAL-BORN ENEMIES** of the **BILLABLE HOUR.**

That's keeping them busy. And happy.

By Roy Strom

As lightning, rain and high winds tormented the Chicago area on the Friday before Labor Day, eight Goldman Ismail Tomaselli Brennan & Baum lawyers sat stranded on a Metra train.

Anyone who has been stuck on those tracks can appreciate the frustration, but it's almost certainly worse for lawyers.

The billable hour has made punctuality nearly as important as critical thinking. And any time a group of civil defense attorneys are traveling together on a Friday night, there's a good chance they're responding to some sort of corporate emergency.

Indeed, the two-hour delay was a "huge nightmare" for the Goldman Ismail lawyers, said partner Shayna Cook. But that's not because every passing hour meant hundreds of dollars down the drain. Nor were impatient clients waiting for their advice.

The group — roughly half of the lawyers at the firm that focuses on defending pharmaceutical companies in mass-tort litigation — was going to be late to its meeting with the rest of its Chicago office's lawyers and staff. The others chose to drive to their rendezvous point that night — a concert at the Ravinia Festival in Highland Park featuring the country rock band Alabama.



The lawyers who founded Goldman Ismail Tomaselli Brennan & Baum (and the ones who joined later) like each other. They eat lunch together. They go to cultural events together. Their office is set up so they can collaborate and communicate together. And it's all facilitated by a business model that encourages teamwork and discourages cutthroat competition.

"It actually was sort of a fun bonding experience to be trapped on this train," Cook said. "We were all e-mailing each other making fun of our choices because we had been really cocky about the train choice."

In one way, this scene illustrates what Andy Goldman, Tarek Ismail and Ken Baum had in mind when they left the

partnership at Chicago's nationally lauded Bartlit Beck Herman Palenchar & Scott to form their own firm with two Dallas-based lawyers 4½ years ago.

The new entity — Goldman Ismail — took at least one important cue from Bartlit Beck: It rejected the billable-hour model, which as managing partner Melissa Widen put it, "affects everything we do."



(From left to right) Tarek Ismail, Melissa Widen and Andy Goldman. Photos by Lisa Predko.

Crucially, that includes the way the lawyers interact — whether it's at the office working on the high-stakes, mass-tort defense trials they are well-known for or stuck on a train while hoping to see a country-rock band on a Friday night.

The billable hour creates incentives for attorneys to shoulder their own load, Goldman Ismail contends, while the success-based alternative fees it favors foster a team-first mentality that can be seen on any given day at its Chicago office.

The 564 W. Randolph St. office, which opened a year ago, was designed with considerable attention to that philosophy. Lawyers' offices feature glass walls and doors, which cater to the firm's belief that five minds thinking together are greater than one on its own — especially since it means no extra charge to the client.

Toward that same end, there are also open-area "work stations" made up of chairs usually surrounding a whiteboard.

And the cafeteria takes up a good portion

of the 13,000-square-feet of space — because those present at the office eat lunch together on most days.

For any small firm considering doing away with the billable hour — which is increasingly something clients are asking for — Goldman Ismail offers insight into just how pervasive a change in thinking that represents. And if the firm's growth is any evidence of how successful it can be, consider that the firm has added to its five founders to form a roster of 16 lawyers and has picked up clients every year.

Not to mention creating an environment that can turn the torment of a stranded train into a "fun bonding experience."

"It's an appealing way to practice," Widen said.

From virtual to reality

Goldman Ismail owes its existence to a bonding exercise that happened not on a Metra railcar, but in hotel rooms during two mass-tort trials over the course of

about a decade.

The founding lawyers worked together in what are known as "virtual law firms" that corporations put together to defend themselves in big-time trials. The client hires a group of lawyers from various firms with different skills to work on a case.

In the case of Goldman Ismail, those firms were Bartlit Beck and Fulbright & Jaworski, where Dallas-based lawyers Sean Brennan and Joe Tomaselli practiced and are still located.

The Goldman Ismail founders first worked together while representing pharmaceutical company Bayer AG after it pulled a cholesterol drug, Baycol, from the market in 2000. Then, in 2005 and 2006, they were teamed up by Merck & Co. Inc., as it needed help defending a painkiller called Vioxx that was removed from the market in 2004.

In 2006, there were six New Orleans-based federal trials over Vioxx that lasted roughly the entire year. Baum and

Tomaselli worked on all of them, while Goldman, Ismail and Brennan rotated in.

“What that meant was for nine months I shared a hotel room as an office — as a war room — with Joe,” said Baum, who now practices out of Santa Monica, Calif. “Going through an incredibly difficult stretch. Four thousand hours of work. Six trials. Difficult circumstances. For it to be a happy memory and not the worst year of one’s life, that speaks incredible volumes.”

In some cases, Tomaselli said, the team spent “every waking minute with each other.”

“That’s the reality,” he said. “And that formed the bonds of a close personal and professional relationship.”

Somewhere along the way — none of the five can recall the exact moment the plan to form a firm was first mentioned — those friendships led to the 2009 creation of Goldman Ismail.

“We essentially got to work with our best friends, and it’s tough to find a better situation than working with your pals,” Baum said.

It must also be noted, however, that those friends are all highly skilled trial lawyers and that each played his or her own part in forming a full-time version of the part-time virtual firm.

Goldman, the first associate hired at Bartlit Beck, was the second chair — Phil Beck was first chair — in many of the Baycol trials. He alternated with Ismail between first and second chair on some Vioxx cases.

Baum, who holds an M.D. and J.D. from Yale, is best known for diving into the science behind the medicines at trial. Tomaselli focuses on the science side, as well, and jokes that “essentially I ask Ken what the answer is and I just try to memorize it.”

Brennan is well-known for setting up settlement agreements on complex, multi-district litigation.

“He’s everybody’s friend because he hands out a lot of money to people,” Tomaselli said.

The details of their relationship aren’t trivial.

A bedrock of trust and confidence, they said, is required to operate a law firm that sees each lawyer as a special tool to be used on any case, as opposed to their own profit centers.

“The idea of being able to work with people who don’t have sharp elbows is really important to us,” Goldman said.

“There are a lot of unhappy lawyers out there, and one of the reasons is there are many lawyers who tend to look out for themselves first and foremost. ... And we wanted to develop a structure where there wasn’t this tension between trying to advance your own professional careers often at the expense of the firm or others within it.”

Fixed, flat and any kind of fee in between

The firm’s formation came shortly after the worst depths of the 2008 financial crisis that has resulted in — or simply accelerated the emergence of — what many see as a forever-changed legal industry.

Law firms accustomed to raising rates every year increasingly find pushback from general counsels’ offices. Many purchasers have attempted to shift the way they pay for legal services from an hourly model to a project-based model.

Bartlit Beck is one firm that offered its services on a non-billable hour basis early on. Founded in 1993, by 2002 it had shifted to an



(From left to right) Melissa Widen, Andy Goldman and Tarek Ismail

exclusively nonhourly payment schedule. It was one aspect of the firm all the Goldman Ismail lawyers agreed they wanted to emulate.

“You end up really focusing on the wrong metric” using the billable hour, said managing partner Widen, who is married to Goldman and previously worked in-house at the now-defunct accounting firm Arthur Andersen.

“The metric is not, ‘How long or how quickly am I doing something?’ But in our view it’s, ‘What is the result? How can I do this work most efficiently and in the best possible way to get the best possible outcome for our client?’”

In practice, Widen said, that means the firm’s lawyers spend a lot of time working on a case before they ever make a pitch to a client about taking on the matter — or what it will cost.

Like a contractor preparing to bid on a construction project, Widen said the firm inputs the amount of time, lawyers and other resources into spreadsheets to forecast costs of a project. The lawyers use data to inform them how much certain types of cases will cost.

Many firms who have existed on a billable-hour model don’t track time precisely enough to make accurate pricing predictions, said Kent Zimmermann, a law firm consultant at the Zeughauser Group. That’s one of the biggest stumbling blocks firms face when

trying to transition to an alternative-fee model.

"You need to have a good sense of your past performance in terms of fees and margins realized on those fees," Zimmermann said. "You need to have a good sense of past performance in a granular way on specific types of matters in order to predict results. And many firms haven't focused a lot of attention to that."

While the fees can be structured in a variety of ways, the firm often is paid a flat monthly fee and receives a bonus based on a defined measure of success — for instance, winning on summary judgment or winning at trial.

The firm declined to provide a representative monthly fee, saying that it varies too much depending on a series of factors, including the stage of litigation, number of documents, jurisdiction, staffing responsibilities, the number of witnesses and more.

"There are just so many factors that come into play," Widen said. "The traditional law firm accounting programs just don't work for us. They're for a totally different business model. So we've had to create a lot of different things. ... We use Excel a lot. We use Access databases that we create. We start from scratch."

While flat and success-based fees are offered by a number of firms, Goldman said his is committed to flexibility — offering almost any kind of structure the client wants.

For instance, the mass-tort cases Goldman Ismail often works on can feature numerous trials. The Vioxx litigation involved 16 — 11 of which Merck won — and it still resulted in a multi-billion-dollar settlement. Along that road, there are plenty of events that can trigger payment — after the first trial, after each trial or even only at the ultimate end of the litigation.

"That's a creative way of tying our ultimate compensation to the client's level of satisfaction at the end of the litigation," he said. "We want the client to see us as their problem-solver, as a firm you can go to to help win your end-game strategy as opposed to one small piece of the litigation."

While that plan involves an inherent amount of risk, the lawyers said they are

confident "betting on themselves."

"You're putting more skin in the game, but you'll do better if the client does better, which is the aligning-incentives rationale behind the whole thing to begin with," Ismail said.

"From a firm perspective, you have more risk but you have more potential reward. And for the company or client ... if I get the outcome I'm looking for, I should feel comfortable paying more for it."

Zimmermann, the consultant, said perhaps the largest risk that comes along with shifting a law firm to an alternative-fee structure is the inability to accurately predict costs.

"For some firms, it's a major shift in their business model," he said. "It goes to the core of who they are and how they staff matters with their talent pool. The data they track and the metrics they analyze. It's like everything. You start to see how it's a major shift."

All hands on deck

The firm's fixed fee structure wins business from some forward-thinking clients, but its biggest impact is perhaps felt inside the firm.

The hourly model can breed competition among lawyers who are paid based on how many hours they bill or originate. There is no origination credit at Goldman Ismail — successful work means a bigger pot for everyone to split and that makes lawyers more willing to invite others' opinions on their cases, Goldman Ismail lawyers said.

"We have all the reason in the world to collaborate, to work together, to bring in people who may not even be on the case to bounce ideas off of," Widen said. "We don't worry about, 'Oh, we're taking a half-hour here. This is too long. Everybody get back to your office and start billing.' There's none of that, and I think that's a real competitive advantage for us."

That mentality made it difficult to operate in the firm's first space, which featured a familiar law firm setup — eight offices lined down a hallway.

"We're not a traditional firm, we don't work that way," Widen said. "So we really wanted a space that matched that."

The West Randolph Street office the firm moved into last November with a 10-year lease was designed to encourage as

much collaboration as possible, Widen said. With roughly 20 employees currently in 13,000 square feet, there's a lot of open space. One such area is where a corner office would be. Instead of the most senior member of the firm's desk, there is a table, whiteboard, lounge chairs and a TV.

"Nobody would take it. Nobody wanted it," Widen said of the corner space.

Ismail said the office's design is a logical match with the alternative fee system.

"We thought it was important to have space — collaborative space where people would feel comfortable exchanging ideas," he said. "The whole office is designed with that in mind, from the glass on the interior windows to the various spaces. That sharing of ideas benefits the output tremendously. And one of the good things about the alternative fee system is that it allows for that collaboration without penalizing the firm or the client."

Alan Littmann, a partner at the firm, said Goldman Ismail has been offered work under the condition that it uses the billable hour. The firm turned down the offers.

"It's just not something the whole firm structure is built for," Littmann said.

"There are so many things we benefit from and our clients benefit from that would be lacking in that instance. Sitting around keeping track of our time doesn't promote the sort of collaboration we engage in, the way we work with all hands on deck all the time. It's just not the way we work."

More deckhands?

In interviews with 10 of the firm's lawyers, they almost unanimously said their biggest concern was how to grow the firm with new hires.

Brian O'Donoghue, the first associate hired and first internally promoted partner, said it's a near-daily conversation.

"The challenge we face in the coming years is to keep that spirit of fellowship and professionalism in the office as we grow and to make sure every addition to the firm not only has the credentials to be an excellent attorney ... but at the same time is somebody that you would want to be stuck in a hotel room with for nine weeks straight with no break," O'Donoghue said.

Thus, every employee at the firm interviews every potential hire. Incoming

partners interview with associates and staff, eschewing any thoughts of a hierarchical structure.

This year, the firm added four lawyers. But the partners said that's unusually high and a pace that likely won't be maintained.

"Our goal is to continue to help our clients achieve outstanding results in an efficient way and never grow so much where we lose the culture or jeopardize the culture we've worked so hard to develop — having lunch together or spending time together," Goldman said.

"I'd never want our growth to jeopardize that culture that we have been fortunate to have developed here."

The most recent hire, as of early September, was Emma Neff, an associate who came to the firm in August. She joined

Baum and his wife, Julie Cantor, as the firm's third lawyer who also holds an M.D.

Neff attended Duke University for her M.D. and completed two years of a surgical residency in addition to graduating from Columbia Law School.

She was looking to work as an associate at a New York firm, planning to help handle the wave of legal issues resulting from ongoing changes to the nation's health-care system.

Then a Columbia Law School employee notified her of an opening in Chicago at a litigation boutique. She interviewed with the entire firm (except for O'Donoghue, who was traveling).

That process sold her on changing her mind and moving to Chicago, she said.

"I think part of what I love about surgery

and loved about where I trained was it was this group of amazing people that I got to work with," Neff said. "And I think that's the same thing that I liked about here. It was a group of people who are just really good people — in addition to enjoying their jobs and being good at them."

When asked if the people had proved to be as decent as they seemed in an interview, Neff said they have.

She noted their regular lunches together and the concert they attended together about a week into her job — the Alabama show at Ravinia.

"It was a horrible concert, absolutely horrible concert," Neff said, adding that she is not a fan of country music. "But it was a blast." ■

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