

## Innovative Managing Partner: Goldman Ismail's Melissa Widen

By Jeff Overley

*Law360, New York (October 15, 2012, 4:29 PM ET)* -- Early 2009 should have been a terrible time to debut a new law firm, but for Melissa S. Widen, managing partner at Goldman Ismail Tomaselli Brennan & Baum LLP, the brutal recession presented an opportunity tailor-made for a litigation boutique dedicated to a streamlined, cost-conscious way of winning cases.

The essence of the firm's gambit, which Widen spearheaded, was a full-on, bear-hug embrace of alternative fee arrangements that many industry counterparts have adopted more in rhetoric than substance, making Chicago-based Goldman Ismail an alluring option for cash-strapped corporations and scoring Widen a spot on Law360's list of America's Most Innovative Managing Partners.

"We all knew what was happening in the legal market — firms were laying off lawyers, and clients were under a huge amount of pressure to control and reduce their legal expenses," said Widen, whose firm also has offices in Dallas and Santa Monica, Calif. "From the start, we knew we wanted to do something different, but given the economic climate, there was almost a mandate for it."

The billable hour's obituary has been written over and over, but the age-old practice still has a strong pulse. In October 2011, for example, Fulbright & Jaworski LLP reported that more than 60 percent of corporate counsel used AFAs, up from about 50 percent the year prior. Nonetheless, nearly 70 percent of those surveyed said such arrangements represented less than 30 percent of their spending on outside counsel.

Instead of paying lip service to the idea of creative fee structures, Goldman banished the billable hour entirely, something evidenced by a complete lack of timekeeping software at the firm, which specializes in pharmaceutical product liability defense and patent infringement matters.

"As an idea, as a concept, it's been sort of the in-vogue topic," partner Tarek Ismail said of AFAs. "It is exclusively what we have done. It's sort of just the foundation of our billing arrangements. One of the things we pride ourselves on is being able to be very flexible."

So flexible that there's no finite menu of fee arrangements that the firm offers. Typically there will be a flat monthly price, and oftentimes there's a reduced rate in exchange for a success-based contingency fee that Goldman Ismail characterizes as betting on itself. In other instances, billing varies depending on the phase of litigation, and Ismail said the firm is all ears if a customer has special budgetary needs necessitating some other form of payment.

"We'll entertain practically anything and see if it makes sense to both sides," he said.

The unconventional philosophy is not without risks to Goldman Ismail's bottom line, as an AFA can start to resemble pro bono work if a case turns out to be more complex or time-consuming than expected.

"We feel pretty comfortable in our ability to price cases right, but we're not always right," Widen said. "We've certainly had cases where we've reached an agreement with our clients for a certain fee, and it's turned out that there's much more work than we anticipated — and we live with that. We're invested in this approach."

Changing the traditional compensation model changes everything from the way a case is litigated to the way a firm is staffed, Widen said. Associate leverage has been eschewed in favor of an inverted pyramid where eight of the firm's 13 attorneys are partners. Peripheral tasks, such as drafting of research memos, are often avoided in favor of more pressing matters. Decisions on how to review documents and what depositions to prioritize become more important.

"It helps us crystallize our thinking on, 'How do we win this case?'" Widen said. "We're not looking to analyze every possible legal issue under the sun."

At the same time, Widen said clients can count on all essential bases being covered, because if Goldman Ismail doesn't prevail, it often doesn't get a bonus payment.

Widen, who was previously a Jenner & Block LLP litigator and in-house litigation counsel at Arthur Andersen LLP during the Enron scandal, has tried to keep Goldman Ismail on the cutting edge by going so far as to recommend money-saving measures for issues her firm's not even working on. On one occasion, when visiting a client grappling with companywide budget cuts, she proposed an innovative fee structure but also identified potential savings from third-party vendors, such as those responsible for court reporting and serving subpoenas.

"The client was just blown away," Ismail said. "It was above and beyond what they were asking."

The novel approach to fees undergirds a broader culture of efficiency that forgoes many of the conventions found at established firms. Nowhere to be found are the various committees attorneys might sit on at the legal industry's largest firms. Absent are the managerial duties imposed on heads of various departments.

"They don't need to be distracted by the normal, institutional sort of law firm demands," Widen said. "Lawyers are much more efficient when they can make their singular focus their client and their work."

Partner Alan E. Littmann said Widen looks everywhere for ways to make wiser uses of time. She routinely "leads a discussion as to how we can solve problems, be it staffing, how we work, our efficiencies, how we leverage technology," Littmann said.

Those talks, in turn, are emblematic of Widen's democratic, consensus-building style of management, something colleagues say is reflected in everything from her leadership of meetings to her design of new office space the firm will soon call home.

"We joke that we almost have as many collaborative work zones in our new office as we do attorneys; it's almost a one-to-one arrangement," Ismail said.

Since the team is spread out across the country, not everyone is immediately exposed to the collaboration-inspiring interior design. Therefore, virtually every employee at the firm is on a twice-monthly conference call that keeps all staffers in the loop, Littmann said.

"We want everybody to know what's going on at the firm," he said. "I think that's a really important feature. Everybody feels ownership."

Clients so far have responded enthusiastically to the distinctive approach, giving Goldman Ismail prominent roles in several notable cases in recent years. In 2010, for example, it helped Denny's Corp. beat a proposed class action accusing the diner giant of sneaking staggering amounts of sodium into such dishes as the Moons Over My Hammy, SuperBird Sandwich and Meat Lover's Scramble.

That same year, Goldman Ismail secured victory for Merck & Co. Inc. in a two-week trial related to Louisiana Medicaid's claim it wouldn't have covered painkiller Vioxx if it had known more about the drug's risks. Last year, it helped win a tort trial over alleged bone damage caused by Merck's osteoporosis drug Fosamax, which is the subject of multidistrict litigation.

Goldman Ismail calls those triumphs proof that it offers a rock-solid formula, and Littmann says much of the credit belongs to Widen for finding bright prospects in the dark days of early 2009.

"She very clearly had a good strategic vision [by] recognizing that the challenging economic times actually created an opportunity," Littmann said. "To be aware of our strategic advantages was really very visionary."

--Editing by Katherine Rautenberg.