



LITIGATION BOUTIQUES

HOT LIST

A Special Report



With this issue, *The National Law Journal* inaugurates our Litigation Boutiques Hot List, featuring 10 small firms that take second place to no one in courtroom skill. These are the firms important clients turn to for state-of-the-art advocacy in bet-the-company cases. They are carving out specializations in products liability, international trade, intellectual property and other areas of the law. They also represent an avenue to practice high-end law on a more human scale than perhaps is offered by larger firms.

At this start-up, the billable hour is anathema

Formed in 2009, Goldman Ismail specializes in defending pharmaceutical and medical-device makers.

BY SHERI QUALTERS

Goldman Ismail Tomaselli Brennan & Baum's founding partners came from two different firms and a corporate law department, but they were hardly strangers. Their common bonds included deep experience defending big pharmaceutical and medical-device companies in products liability cases and a commitment to alternative fee arrangements.

The boutique opened in 2009 with three former partners at Chicago's Bartlit Beck Herman Palenchar & Scott, two former Fulbright & Jaworski partners and managing partner Melissa Widen, who had been an associate at Chicago's Jenner & Block before working in-house at the fallen accounting firm Arthur Andersen.

"Everyone had known each other for a long time," Widen said. "The idea was to form a firm working with people you really liked and respected, and also to create something a little different."

In fact, several of the lawyers had worked together on teams created by client companies, said founding partner Tarek Ismail. "We worked very closely together and formed personal and professional bonds," he said.

The 13-lawyer Chicago boutique has established satellite offices in Dallas and Santa Monica, Calif., and added intellectual property and general complex commercial litigation to its services.

Hourly billing is anathema—the firm hasn't even bought timekeeping software, Widen said. "All of our fee structures are some type of alternative fee structure," Widen said.

The billing menu includes flat monthly fees combined with a potential bonus, phased-in fee agreements and fee cap agreements. The idea is to offer "a great deal of variety and flexibility" to clients, Ismail said. "We're at a size that we can be nimble in arranging any fee arrangement."

The firm doesn't disclose revenues or salaries, but Widen said it pays "at the top range of the legal market" and it serves *Fortune* 100 companies.

The firm sees to a full range of litigation matters for clients including divisions of Bayer Corp., Medtronic Inc., Merck & Co. Inc. and Pfizer Inc., and expects to continue working for them, Widen said. "In 2 1/2 years, we've assembled a blue-chip roster of clients," Widen said. "We're a small firm, but we have a kind of practice that you'd see at an Am Law 100 firm." She referred to the annual list of the largest U.S. law firms by revenue compiled by *The American Lawyer*, an affiliate of *The National Law Journal*.

Approximately 60 percent of the firm's work involves pharmaceutical and medical-device cases; 30 percent intellectual property; and 10 percent general commercial matters.

Products liability work likely will remain a significant part of the practice, but the

partners made a conscious decision to move into intellectual property law when it hired former Bartlit Beck partner Alan Littmann in May 2010, Ismail said.

“We think we have an expertise in presenting complex information to judges and juries, and we understood there was an opportunity to extend that expertise to patent litigation as well,” Ismail said.

In November, for example, Littmann took the lead role in convincing a plaintiff to drop claims against Major League Baseball’s Internet arm, MLB Advanced Media L.P., in a Delaware federal multidefendant infringement case, *Walker Digital LLC v. Activision Blizzard Inc.*

Walker Digital filed suit in April against 23 companies, including some subsidiaries. Walker Digital claimed that the defendants infringed on two patents for technology related to electronic and online games. MLB didn’t want to settle because it didn’t believe it had infringed, so Littmann stood up to Walker Digital.

FRIENDLY WARNING

“We talked about what they were trying to do with us and how it could potentially backfire for the rest of the case,” Littmann said. Plaintiffs that overreach on infringement claims can leave themselves vulnerable to invalidity claims, he said.

If resolving the case early doesn’t work, then “we are perfectly capable of doing the alternative, which is to fight all the way through trial,” he said.

Neither Walker Digital nor its lawyers at Agility IP Law in Menlo Park, Calif., and Bayard in Wilmington, Del., responded to requests for comment.

Regarding products liability, the firm took a leading role in the litigation against Merck over its Fosamax osteoporosis medication. Last year, the firm was lead counsel in two federal bellwether cases that the plaintiff voluntarily dismissed shortly before trial, *Hester v. Merck & Co.* and *Raber v. Merck & Co.*, both in the Southern District of New York.

The firm was co-trial counsel in the Southern District of New York bellwether case *Secrest v. Merck & Co.*, which ended with a complete defense victory for Merck in October. Plaintiff Linda Secrest claimed the drug caused severe jaw and dental problems. Goldman Ismail worked with lead trial counsel Chilton Varner, a partner at Atlanta’s King & Spalding; Venable



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—MELISSA WIDEN

of Washington; and New York’s Hughes Hubbard & Reed.

Varner said the Goldman Ismail team brought substantial medical knowledge and enthusiasm for teamwork. “Because they are a small litigation boutique, they’ve got

great flexibility,” Varner said. “That’s a good thing in today’s litigation environment.”

“This space is dominated by large firms,” Ismail said. “Despite that, we have the confidence of our co-counsel and clients to be chosen as trial counsel.”

Goldman Ismail’s work on the Secrest case equalled that of any of the major firms that represent Merck in terms of quality, said the plaintiffs’ lawyer Tim O’Brien, a partner at Levin Papantonio Thomas Mitchell Rafferty & Proctor of Pensacola, Fla.

“Really, when it gets down to it, when you deal with this level of litigation, it’s more about the lawyers’ intellect than about the size of the firm,” O’Brien said.

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