

The lawyer looking to kill the ‘gig economy’

Published: Dec 8, 2015 9:04 a.m. ET

Opinion: Uber may have found match in legal battle with Shannon Liss-Riordan



By
**THERESE
POLETTI**
COLUMNIST



Shannon Liss-Riordan appeared outnumbered and outclassed.

In a San Francisco federal court hearing late last month, Liss-Riordan and a colleague attended a hearing in a high-profile class action lawsuit against Uber Technologies Inc. Across the aisle sat Theodore Boutros, Jr., a partner in the Los Angeles office of Gibson, Dunn & Crutcher, with a full legal team and several supporters in the front row of the court room. Boutros is famous for convincing the [U.S. Supreme Court to overturn what was then the largest employment class action in history](#), against Wal-Mart, and represented the plaintiffs in [the landmark case that overturned Proposition 8](#), which prohibited same-sex marriage in California.

But Liss-Riordan was undeterred. As Judge Edward Chen asked tough questions at a hearing seeking to expand the class of Uber drivers as she sought, Liss-Riordan argued that Uber was trying to change the meaning of its contracts with its drivers in court.

“Uber is asking you to go through gymnastics to rewrite its agreement,” Liss-Riordan said. “My head is spinning trying to follow what Uber would have you do here.”

The Boston-based attorney has reason to be confident —she has already won one victory in getting the case against [Uber classified as a class action](#) lawsuit and is now trying to rewrite the rules of the entire “gig economy.”

Her firm, Lichten & Liss-Riordan, P.C. in Boston, has filed suits against nearly a dozen tech startups in the on-demand space, including Uber rival Lyft. Others on the hit list include food delivery companies GrubHub Inc. [GRUB, +2.01%](#) Doordash Inc. and Square Inc.-owned [SQ, +0.25%](#) Caviar; delivery company PostMates Inc.; shipping service Shyp Inc., and laundry pickup service Washio Inc.; home cleaning services Handy; the now-defunct Homejoy; and grocery shopping service InstaCart.

The lower-cost business model [referred to by many names](#) that these startups rely on hires workers on a freelance basis, without the full benefits of employees, and often gets them to use their own resources, such as their own cars, bikes, etc. But these drivers, shoppers or even “ninjas” can often be monitored through a company’s mobile app or internal software, asked to wear company uniforms, behave according to company policies or “suggestions,” and can be easily terminated.

“It is an important issue facing this country,” Liss-Riordan said in a phone interview.

Presidential candidates agree. This summer, Democratic presidential candidate hopeful [Hillary Clinton brought up what she called the “gig economy”](#) in a campaign speech, without mentioning any companies by name. Republicans seeking their party’s nomination immediately rode to Uber’s defense, with former Florida Gov. Jeb Bush [taking Uber rides through San Francisco](#) and Florida Sen. Marco Rubio [forcefully defending the company](#).

Republicans’ immediate jump to Uber is indicative of the symbol the San Francisco company has become in the space. Uber is one of the most aggressive startups in the tech world, still fighting regulators in some cities around the world and [known for its arrogant culture](#). Just this week, [it raised a \\$2.1 billion more in venture capital at a valuation of \\$62.5 billion](#).

An Uber spokeswoman did not respond to a request for comment about the case.

Liss-Riordan has received the most attention for her lawsuit against Uber, which is set to go to trial in a federal court in San Francisco next June. The suit seeks to recover full gratuities and driving expenses for Uber drivers in California, and is the only one so far to receive class action status.

“Because of arbitration clauses that the companies have made the workers agree to, our ability to get class-action status in many of these cases is going to be limited,” Liss-Riordan said.

The Houston-bred, Harvard-educated lawyer learned about fighting for social change in between college and law school while working for noted activist and former Congresswoman Bella Abzug. She has made a habit of fighting for workers’ rights, and seems to genuinely care about the plight of those she represents.

She and her firm have filed suits against other major companies, including Starbucks [SBUX, +0.18%](#) and FedEx Corp. [FDX, +0.76%](#), on behalf of workers who have been deprived of wages, tips, and overtime; been wrongfully misclassified as independent contractors; or faced discrimination or retaliation. Her firm has represented a range of plaintiffs, from airline skycaps to minority police officers and firefighters, a disabled airline mechanic to nightclub strippers. One big victory in 2012 was a verdict that Starbucks violated Massachusetts's tips law by allowing supervisors to share in tips, resulting in a \$23.5 million settlement.

After one case, she became the proud owner of a pizza parlor in Cambridge, Mass.

Called The Just Crust, Liss-Riordan and her husband ended up buying the pizza place after representing the workers in a case against its parent company, the Upper Crust of Waltham, Mass. The Upper Crust was investigated for hiring undocumented workers and underpaying them by the U.S. Labor Department and fined \$350,000. Forced to declare bankruptcy, the Upper Crust shuttered all its locations.

“I was trying to find a way to save the chain, I was trying to find an investor who would buy the chain but I didn't have a lot of time,” she said. “On a lark, my husband and I went into the bankruptcy auction.”

They ended up buying the Harvard Square store, and have turned it into an employee-owned business, where workers get a share of profits.

Her law partner of 18 years, Harold Lichten, likens Liss-Riordan to “a pit bull with a Chihuahua in her mouth,” a phrase he said he has used to describe her before.

“Once she gets her teeth — no pun intended — into a case, she will not let go, no matter how much adversity she is confronted with,” Lichten said.

As an example, Lichten cites a suit against a franchising cleaning company that required all of its franchisees to file arbitration claims.

“Through incredible force of will, she found 140 individuals and filed 140 arbitration demands,” Lichten said. “Now the company was facing 140 arbitrations, and they quickly settled the case.”

Defeating “unicorns” in Silicon Valley will require tenacity. Washio's legal response may epitomize how many probably feel about Liss-Riordan and her lawsuits: The startup is trying to get Liss-Riordan sent back to Boston.

Washio's lawyers asked the court in a motion to deny Liss-Riordan's request to appear with a colleague without having passed the California bar, Washio's counsel argued that Liss-Riordan and her law firm “have established a California legal practice without a California license.” The judge agreed, denying Liss-Riordan's application for temporary admission. A Washio spokesman declined to comment on the litigation.

Unfazed, Liss-Riordan will do what she has to.

“I am making plans now to take the California bar,” she said.

Other cases will shake out differently. The cases against Instacart and Shyp have moved to arbitration. Both companies have changed their employment practices from the contractor model to the hiring of regular employees.

“In July, we announced our plans to transition our couriers from 1099 contractors to W2 employees,” Johnny Brackett, a Shyp spokesman, said in an email. “This process is now complete and Shyp’s workforce is made entirely of actual employees.”

While he could not comment on the current litigation, he added “it had absolutely nothing to do with our decision to convert.” An Instacart spokeswoman did not respond to a request for comment.

Abby Hunt, a spokeswoman for Chicago-based GrubHub, said delivery is only a small fraction of its overall business. “A vast majority of our 35,000 restaurants across our 900-plus cities utilize their own delivery drivers,” she said. Hunt declined to comment on pending litigation.

While her case against Uber will grab the most headlines, these suits could have other immediate effects. Already, the [former CEO of Homejoy told Re/Code](#) this summer that the four suits filed against it made it too difficult to get more funding, coupled with the [California Labor Commission ruling in June](#) that one Uber driver was seen as an employee instead of a contractor.

“We know that not all of these companies are going to survive, that is just the way the world works, and the way Silicon Valley works,” she said. “Some people are saying that making these companies bear the burden of being an employer is too expensive, it’s going to put them out of business.”

They will receive no sympathy, though, at least from Liss-Riordan.

“Why let a company that has employees get away without following the law, just because it’s going to cost them money,” Liss-Riordan asked. “Workers have certain protections, if they can’t afford to do that, they should not be in business.”

