

Litigator of the Week: Shannon Liss-Riordan of Lichten & Liss-Riordan

By **Scott Flaherty**

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For some entrepreneurs and investors in Silicon Valley, plaintiffs lawyer Shannon Liss-Riordan is Public Enemy No. 1. That's not likely to change now that Uber Technologies Inc. has agreed to pay at least \$84 million to settle her most high-profile case so far.

But like it or not, the lawyer from Boston's Lichten & Liss-Riordan has managed to shake up the so-called sharing economy—and she isn't going away.

The case against Uber challenged the ride-sharing company's policy of treating drivers as independent contractors instead of employees. The April 21 agreement to end the case would resolve claims brought by a certified class of California Uber drivers, and would also resolve a parallel case that Liss-Riordan brought in Massachusetts.

Still, the settlement doesn't call for Uber to reclassify its drivers as full-fledged employees. The deal comes after the U.S. Court of Appeals for the Ninth Circuit agreed earlier this month to consider whether the case warranted class action status, threatening to undermine the drivers' momentum in the litigation. It also comes after a federal judge rejected a settlement in a similar lawsuit that Liss-Riordan led against Uber competitor Lyft Inc. In that case, a judge found that a proposed \$12.25 million settlement didn't provide enough benefit to Lyft drivers.



Jason Dojy / The Recorder

Shannon Liss-Riordan

Although still subject to court approval, the Uber settlement could increase from a guaranteed \$84 million to as much as \$100 million, if Uber goes public or if it's acquired within the next year at a valuation of at least 150 percent of its current valuation of roughly \$62.5 billion.

With Liss-Riordan already established as a divisive figure—media outlets have alternately dubbed her “Uber’s worst nightmare,” lauded her as an “avenging angel” for workers and derided her as a shakedown artist—the settlement has brought even more attention.

The Wall Street Journal came down especially hard, likening Liss-Riordan to a bank robber in a scathing editorial about the agreement, and noting that it could provide up to \$25 million to Liss-Riordan’s firm to cover legal fees. But plaintiffs lawyers also had their own critiques, including that the settlement was little more than a slap on the wrist for Uber, and that it failed to address the overuse of independent contractors in the sharing economy.

Liss-Riordan, who started her firm in 2009 alongside partner Harold Lichten, has built a reputation for representing low-wage workers, especially those relying on tips for much of their income. She has acknowledged that the Uber settlement isn’t perfect, but she told The Recorder that it “provides significant benefits—both monetary and nonmonetary—that will improve the work lives of the drivers and justifies this compromise result.

“If we had not settled, there were some serious risks that all we have fought for—and have achieved—could be taken away,” Liss-Riordan said. “We balanced this risk in deciding what would be a fair resolution.”

While the key issue of the drivers’ legal status remains unresolved, some class members stand to receive significant payouts under the deal, with others getting as little as \$12, according to some reports. On Thursday, Liss-Riordan told us that by her estimates, the most active Uber drivers in the class could be in line for an average payout of around \$8,000.

Uber also agreed to make policy changes that would likely benefit drivers. The company must set up an appeal process for terminated drivers; allow for active drivers to solicit tips from passengers; and make it clear to passengers that tips aren’t automatically included in what they pay for a ride. The settlement also establishes a drivers’ association that would allow drivers to take grievances to Uber management.

And, while the case fell short of forcing Uber to abandon its policy of treating its drivers as independent contractors, Liss-Riordan pioneered arguments that observers say could put the entire sharing economy on alert, and provide a template for future employment disputes.

“Litigation sets an example for other companies,” Liss-Riordan told us on Thursday. In the wake of the Uber case, she said, she’s seen a long list of other companies in the sharing economy that have “gone the other way” on the worker classification question.

“It has deterred a lot of companies from classifying workers as independent contractors,” she said.

Liss-Riordan also challenged critics of the Uber settlement, saying that they’d be hard-pressed to find an example of any similar settlement that actually forced a company to reclassify its workers. And, she pointed out, the agreement doesn’t prevent another group of Uber drivers—not covered by the settlement—from challenging their classification if the company continues to treat them as contractors.

“Nothing is letting Uber off the hook in the future,” she said.

At the very least, Liss-Riordan has put companies in the sharing economy on notice. And they’re likely to be seeing more of her: Next month, Lichten & Liss-Riordan plans to open a San Francisco office.