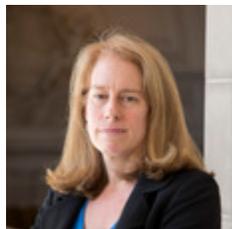


Liss-Riordan Wields New Case Law Against Delivery App

Ben Hancock

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SAN FRANCISCO — The gig economy's least-favorite lawyer has launched a new suit against app-enabled food delivery service Caviar Inc. that could test the boundaries of a fresh appeals court decision limiting the ability of companies to disperse class actions.

The [complaint](#) filed by Shannon Liss-Riordan of Boston-based Lichten & Liss-Riordan against Caviar on Monday is the second class action she has brought against the company in as many years. The first [fizzled last winter](#) after a judge agreed with the company's lawyers at Kecker & Van Nest that the lead plaintiff was bound by an agreement to arbitrate his claims on an individual basis.

But Liss-Riordan, in an email Tuesday, said she believes the new case is on solid footing in light of the U.S. Court of Appeals for the Ninth Circuit's [decision](#) last week in *Morris v. Ernst & Young*, which held that the National Labor Relations Act protects employees' rights to bring collective legal action. "The *Morris* decision is an important development in the battle between employees and employers regarding whether employers can shield themselves from systemic enforcement of the wage laws through the use of arbitration agreements," Liss-Riordan said. "In light of *Morris*, we expect that Caviar's class action waiver will be held to be not enforceable."

She's entering murky waters with that strategy, though. *Morris* provides scant guidance on how courts should treat class action waivers when there is a dispute over whether the plaintiff is an employee or an independent contractor—the central issue in the Caviar case. The NLRA's prohibition on class-action waivers does not cover contractors.

Liss-Riordan's complaint alleges that Caviar couriers are misclassified as contractors and that—as employees—they are owed reimbursement for expenses and other compensation. If the company seeks to route those claims into arbitration, it's unclear whether a judge would first try to weigh the merits of the misclassification argument, in order to rule on the waiver clause's enforceability, or take some other approach.

Another complicating factor is that circuit courts are split over whether class action waivers are enforceable. The Ninth Circuit joined the Seventh in ruling that the NLRA bars such agreements, but the Second, Fifth and Eighth Circuits have gone the other way, raising the likelihood that the issue could go up before the U.S. Supreme Court.

Caviar, which is based in San Francisco and owned by electronic payment company Square Inc., did not respond to an email inquiry about the new suit. Keeker & Van Nest's James Slaughter, counsel for Caviar, also did not respond to messages seeking comment.

Liss-Riordan and her small firm have been waging a guerilla war against some of the biggest and most well-represented companies in the gig economy, including Uber Technologies Inc., Lyft Inc., and GrubHub, another food delivery service. Each case has entailed a fight over the classification issue and the arbitration agreements that the companies have directed their workers to sign. Caviar's business model is based on couriers delivering food from independent restaurants in cities throughout the U.S., which customers order via an app. According to Liss-Riordan's complaint, couriers receive a fee for each delivery that is based on the amount of time the delivery is expected to take, plus any gratuities added by the customer.

Although classified as contractors by the company, her suit contends the couriers are employees because they are required to follow detailed protocols in their interactions with customers, and are subject to termination for failure to adhere to them. She also argues that the couriers are "fully integrated" into the company's business—since without them, the "business would not exist." The order in the earlier Caviar case by U.S. Magistrate Judge Elizabeth Laporte of the Northern District of California compelling plaintiff Jeffrey Levin's case to individual arbitration is up on appeal at the Ninth Circuit, with briefing slated for this fall. Liss-Riordan is also pursuing a separate arbitration against Caviar for labor claims brought under California's Private Attorneys General Act, which can carry stiff penalties.

Contact the reporter at bhancock@alm.com.