

Worker Rights Atty Blazes Trail With Whole Foods, Uber Cases

By **Brian Dowling and Chris Villani**

Law360 (July 24, 2020, 9:02 PM EDT) -- Shannon Liss-Riordan knew it had been a long night when she noticed the morning light breaking and birds chirping outside.

Sitting in her makeshift office in tiny Barnard, Vermont, a small town where Nobel Prize winner Sinclair Lewis also had a summer home, the attorney from Lichten & Liss-Riordan PC had been hard at work redrafting **a complaint** against Whole Foods Inc.

Her grocery-worker clients said the supermarket and its parent company, Amazon Inc., had simultaneously pretended to support the Black Lives Matter movement while also disciplining employees who wore BLM face masks during the coronavirus pandemic, even firing one worker the day before Liss-Riordan's Sunday-into-Monday all-nighter.

"We planned to file first thing Monday morning, and then my lead plaintiff was fired Saturday and that changed everything. We had to ask to get her reinstated," Liss-Riordan said. "I think I was editing until 6 a.m. and then up again before eight to put the final touches on it."

Liss-Riordan has made a career out of representing workers and taking on massive companies. The defendants in her firm's numerous class action lawsuits include **Uber, Lyft, FedEx, IBM**, Michael Bloomberg, **the city of Boston** and, now, Jeff Bezos' companies.

How many class actions does she have pending?

"I can't even tell you," she said, laughing. "It's a lot."

A quick search through the federal docket shows Liss-Riordan listed as an attorney on four dozen still-open civil and bankruptcy cases since 2000. In addition to the Whole Foods suit, she is representing Uber and Lyft workers in one case, and Amazon delivery drivers in another, who are seeking to be classified as employees rather than independent contractors.

Her longtime legal partner, Harold Lichten, said that after two decades of practicing law, Liss-Riordan has her eyes set beyond the run-of-the-mill employment claims.

"She sees her calling as going after some of the larger global issues, not just the wage and hour issues," he said. "She's looking for the trailblazing case."

With the coronavirus pandemic and protests against racial injustice shining a spotlight on workers' rights, it's a unique time and opportunity for attorneys willing to take a chance on a case that doesn't follow a well-established legal framework.

As the "new normal" takes shape with every big or small decision that employers and workers make, Liss-Riordan said the opportunity for that sort of impactful litigation is ripe, as is a chance for profound systemic change.

Since the virus began to spread in the U.S., Liss-Riordan said she, Lichten and the rest of the firm's attorneys and staff have been working "around the clock." It was clear to her from the outset that the pandemic would disproportionately affect her clients.

In the Uber and Lyft case, the firm lost an emergency injunction motion for employee status that cited the public health crisis, although a Massachusetts federal judge said the drivers could still prevail on their underlying misclassification claim.

"Right away, I saw the impact on the Uber and Lyft drivers we have been representing for years," she said. "We

have been focused on their wage issues and having to pay for their own expenses and what a toll that takes on them. It became so apparent the injustice of them not even getting paid sick leave, and what better time than a global pandemic to point out the fact that these are essential workers who should be entitled to their basic rights."

Liss-Riordan said there has been a discernible shift in the public perception of gig workers since the pandemic began and people started to rely even more on services like Instacart and Amazon Prime.

"It's been at these very difficult times in our nation's history that some of the greatest movement forward happened," she said, noting that Congress passed the Fair Labor Standards Act after the Great Depression.

"There is more recognition of the enormous income inequality we have in this country and the plight of workers not getting their rights and companies not recognizing and acknowledging the protections workers need," Liss-Riordan continued. "I think the sentiment is shifting, and I think it's an opportunity for great advances to be made."

So Liss-Riordan has tried to match the moment by opening up new fronts in her ongoing battles with Uber and Lyft and through new suits like the one against Whole Foods. Most of her cases against the ride-hailing companies are in Massachusetts and California. The pandemic has made things a little easier, allowing her to hop on Zoom for a hearing instead of a cross-country flight.

Her home office has recently been decluttered, having been filled with leftover campaign materials from her unsuccessful bid to unseat Massachusetts U.S. Sen. Ed Markey in the Democratic primary. Instead, it will be Markey and U.S. Rep. Joe Kennedy III, the grandson of former Attorney General Robert F. Kennedy and grand-nephew of the 35th president, who will battle it out.

Like many working professionals, Liss-Riordan has had to share her home workspace with her children. She said her three teenagers are interested in her work and in social justice. They came to her campaign events and knocked on doors for U.S. Rep. Ayanna Pressley, D-Mass., and Suffolk County District Attorney Rachael Rollins, a pair of unapologetically progressive candidates, both elected in 2018.

Liss-Riordan said the experience of running for the Senate further motivated her work as a labor lawyer.

"It was such a fabulous opportunity to think more expansively," she said. "There is clearly more political openness now to real change. Joe Biden, who ran as a more centrist candidate, has been moving left and heeding a lot of the calls from labor advocates."

With Democrats "possibly on the verge of retaking the White House and the Senate," Liss-Riordan said they need to be "ready to act."

Asked if he was relieved when Liss-Riordan stepped back from politics and decided to continue practicing at the firm, Lichten paused, then answered, "No, I wanted what was best for her."

"We would have been fine either way," Lichten said of the firm, adding that it wouldn't have hurt having his former partner in public office — a possibility he's not ruling out.

"I'm not sure she's done," Lichten said. "Once you get that politics bug, I think it stays with you a little bit."

As a Democrat and longtime activist herself, Liss-Riordan has not shied away from calling out her own party. She slammed Boston Mayor Marty Walsh for declaring war on racism while defending a police promotional exam twice found to be discriminatory in a long-running suit led by Lichten & Liss-Riordan PC.

Liss-Riordan organized a protest at City Hall just before the city announced it would appeal a judgment in favor of minority officers who say they were denied promotions because of the exam. The city recently signaled its intent to take the case to the First Circuit.

"It's shocking that people in power can say one thing they think their base wants to hear and then do something completely different," she said. "Marty Walsh may say all these things and then continues to fight us tooth and nail and spend hundreds of thousands of taxpayer dollars to defend a racist exam in court."

Liss-Riordan represented former campaign workers in a lawsuit against Bloomberg that alleged the billionaire failed to pay the staffers of his 2020 White House bid. She criticized him over reports he purchased a Colorado ranch for \$45 million, saying a small fraction of that amount could have resolved the claims that have spawned multiple lawsuits.

As she has taken on powerful figures and corporate giants, it comes as little surprise that Liss-Riordan has made some adversaries in the BigLaw world.

She calls Labor Secretary Eugene Scalia her "arch-nemesis" from his time as a partner at Gibson Dunn & Crutcher LLP — one of the firms that gig-economy companies hired to fight off Liss-Riordan's cases — and his ongoing Labor Department efforts to make it easier for businesses to classify workers as independent contractors. The two have never been opposing counsel on a case.

"Some defense counsel I have good, long-standing relationships with," she said. "Others are not as nice, but we do what we have to do when we battle it out in court."

A representative from the Labor Department declined to comment on Liss-Riordan's description of Scalia. A handful of other attorneys who have litigated across from her also declined to comment.

While the pandemic has spotlighted many inequities, including those endured by gig workers, Liss-Riordan said there is a real chance things could worsen for that group if Uber, Lyft and others are allowed to continue classifying their workers as independent contractors.

"I worry about what the future of work looks like in this country," she said. "Whenever we emerge from this pandemic if these companies continue to get away with misclassifying their employees, what if other companies watching these battles play out start looking at that and say, 'We are going to bring workers back and make them all independent contractors. Wouldn't that be easier and cheaper and better for society to get them back working?'"

In recent weeks, there has been some good news for her crusade. The First Circuit **sided** with Liss-Riordan's argument that Amazon can't force its delivery drivers to arbitrate employment claims, finding that they qualify as transportation workers engaged in interstate commerce under the Federal Arbitration Act.

Without being able to force workers into arbitration — where employees' claims are generally heard on an individual basis — companies like Uber would have to face a whole class of employees in court and reckon with the possibility of a costly settlement.

Liss-Riordan plans to continue the work that she has been doing in a firm that has swelled in size in recent years to about a dozen attorneys and at least as many staff. She has also not ruled out another political campaign and said her recent experience might lend itself to again running for something on the national stage.

"I've been excited to be back in the courtroom, but we'll see what the future holds," she said.

--Editing by Jill Coffey.