

Rising Star: Gibson Dunn's Katherine Smith

By Vin Gurrieri

Law360 (September 10, 2019, 4:45 PM EDT) -- Gibson Dunn & Crutcher LLP's Katherine V.A. Smith has helped businesses like Ford Motor Co. and K12 Inc. defeat workers' bids to win certification in high-profile class actions and was one of the lead partners tasked by Wynn Resorts to probe alleged sexual misconduct by then-CEO Steve Wynn, landing her among the five employment lawyers under age 40 honored by Law360 as Rising Stars.

HOW SHE CHOSE EMPLOYMENT LAW:

Smith joined Gibson Dunn as an associate right out of law school and quickly took advantage of the firm's "free market" system, which gives associates leeway to sample different types of cases early in their careers.

Those early experiences allowed her to gain knowledge about other areas of the law and work with "a broad range of partners" in different departments. She took that knowledge with her as she started focusing exclusively on employment law, which she considers "one of the most varied and challenging" practice areas.

"While I'm now firmly in the employment group, I tried pretty much every kind of litigation that there is during my first years at Gibson and as a result I think I became a very well-rounded attorney," Smith said.

"I really enjoy the people aspect of [employment law]," she added. "At the end of the day, every employment case is about the people and their story and I find that very compelling."

HER PROUDEST MOMENT:

In a California state court class action accusing online education provider K12 Inc. and two charter schools of not properly reimbursing teachers at two virtual academies for business expenses, Smith convinced a judge to deny the

RISING ★ ★ ★ ★ ★ STAR



Katherine V.A. Smith
Gibson Dunn

Age: 38
Home base: Los Angeles
Position: Partner
Law school: University of Virginia
School of Law
First job after law school: Associate
at Gibson Dunn

plaintiffs' motion for class certification despite the judge having initially indicated that he would certify the class of potentially hundreds of individuals.

Over the course of the two-day long argument on behalf of K12, Smith said she focused on showing the court that any determination of whether legal violations occurred would require an analysis of each putative class member's expenses to see if they exceeded the stipend they were already receiving.

"We believed our papers were very strong but the initial tentative from the bench was to grant the motion," Smith said. "I focused my argument on why the individualized inquiries that we had established in our papers were questions of liability and not damages as the plaintiffs had stated. We argued that for two days ... and the court then issued an order denying class certification in full and part of that order actually referred back to the opposition paper itself and adopted the positions that we had taken there, which was very rewarding, and I was very proud to have obtained that result for K12."

HER BIGGEST CASE:

While not in the context of litigation, Smith says that one matter that will be "a standout matter for me for many years" was her work alongside two colleagues investigating a decades-long alleged pattern of sexual misbehavior by casino magnate Steve Wynn after Gibson Dunn was retained in February 2018 by a special committee of Wynn Resorts' board of directors.

"It was fast-paced, all-consuming. And it wasn't a trial obviously, but it had the same urgency of a trial," Smith said, noting that the investigation involved about 140 interviews as well as a review of millions of documents.

While such investigations require lawyers to wear the hat of a neutral fact-finder as opposed to playing the role of an advocate, Smith said she was heartened by the fact that many of the firm's recommendations were ultimately enacted.

"It was really encouraging and rewarding when we concluded the investigation and saw that several of the changes that we had recommended to the company's policies and procedures were put into place," she said. "I feel like it was a great learning experience for me to work on one of these major #MeToo investigations and certainly that's an area of the law that's continuing to grow."

WHAT MOTIVATES HER:

Motivation for Smith comes from both a desire to succeed for her clients as well as her zest for working collaboratively with other lawyers on those cases.

"I'm a litigator so I love to win — I'd be lying if I said anything different. When an order comes out in your client's favor, there's nothing like it," Smith said, while adding that her "favorite days are the days where we're all pushing together to get our brief on file or we're meeting to brainstorm strategies for an upcoming trial."

ON THE FUTURE OF EMPLOYMENT LAW:

Over the past few years, the dominant story in employment law has been the imprint that the #MeToo movement has left on workplaces as employers nationwide have taken hard looks at their policies to address workplace sexual misconduct and some employers have taken more decisive actions to address bad behavior.

While complaints and internal investigations by employers aren't likely to subside anytime soon, Smith believes they could also be accompanied by more litigation in the years ahead as inappropriate behavior increasingly comes to light.

"I do think there will still be complaints and investigations, those really haven't slowed down," Smith said. "But I expect we're also going to see a move toward more litigation as things come out of investigations ... especially in the class or mass lawsuit context stemming from harassment and gender discrimination issues as well as pay equity issues."

But Smith added that many employers have become more driven in the wake of #MeToo to ensuring that they have the right policies in place to curb harassment and address it when it occurs and that those policies are working as intended.

"I've seen many employers seeking to take proactive steps on diversity and inclusion, which is fantastic," she said, adding that employers' increasing willingness to achieve those goals in "new and different ways" will expand practitioners' role in "advising on those types of initiatives and evaluating the potential unknown risks associated with them."

— *As told to Vin Gurrieri*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2019 Rising Stars winners after reviewing more than 1,300 submissions. Attorneys had to be under 40 years old as of April 30, 2019, in order to be considered for this year's award. This interview has been edited and condensed.