

Class Action MVP: Gibson Dunn's Theane Evangelis

By **Alex Wolf**

Law360, New York (December 6, 2016, 9:05 PM EST) -- By successfully arguing in trial and appellate courts for the application of worker arbitration pacts to help big name clients like Uber and GrubHub Inc. evade expensive employment class action litigation, Gibson Dunn's Theane Evangelis has earned a spot among Law360's 2016 Class Action MVPs.

Uber Technologies Inc. can thank Evangelis, among others, for being able to breathe a little easier in the face of recent class actions filed by drivers, who have accused the ride-hailing service in separate suits of misclassifying them as independent contractors and performing background checks without their authorization.

Evangelis is credited with helping achieve a September victory in the Ninth Circuit, where a panel overruled a district court's finding that hundreds of thousands of Uber's arbitration agreements with drivers were unenforceable. The appellate panel found that the enforceability of the agreements is for an arbitrator to decide. The Ninth Circuit also rejected an earlier conclusion that the delegation clauses are unconscionable.

Although the appellate ruling applied directly to just two proposed class actions from ex-drivers claiming Uber performed background checks without their authorization, it may serve as a shield against other cases brought by California drivers and lead to the decertification of a class suit over employment status and expense reimbursement currently on interlocutory appeal in the Ninth Circuit, according to Gibson Dunn.

"It is the first appellate decision regarding Uber's arbitration agreements, so it is significant," Evangelis told Law 360. "It's rewarding when you achieve the right result and when the appellate court gets it right."

A bid for en banc rehearing in the litigation over background checks is pending in the Ninth Circuit.

MVP CLASS ACTION



Theane Evangelis
Gibson Dunn

Evangelis and her team took a similar approach in a successful bid to preemptively deny certification for a proposed class of GrubHub delivery drivers. In July, U.S. District Judge Jacqueline Scott Corley granted the food delivery service's motion to deny class certification on the basis that the named plaintiff was not typical of the class because while most other drivers signed arbitration agreements with class action waivers, he opted out.

"It's an important decision that sort of provides a road map for courts and what they should do when confronted with arbitration agreements that bind most of the class," Evangelis said. "You can't have a class action under those circumstances."

Evangelis found her way into practicing class action and appellate law at Gibson Dunn after clerking for Ninth Circuit Judge Alex Kozinski and former U.S. Supreme Court Justice Sandra Day O'Connor. Her interest in appellate and class action law was further stoked by her involvement as a member of defense counsel in the landmark case *Dukes et al. v. Wal-Mart*.

"It's a fascinating area of the law because class actions are a procedural device and they can serve a useful purpose, but there are also lots of dangers and pitfalls associated with them," she said.

Aside from earning favorable judgments for Uber and GrubHub within the past year, Evangelis also defended prior victories for clients like Yamaha Motor Corp. USA and ABM Industries in class action litigation appeals.

Evangelis is currently defending Yamaha in a Ninth Circuit appeal launched by customers who accuse the company of selling defective outboard boat motors that are prone to corrosion. Before the appeal, Evangelis obtained a dismissal of the proposed nationwide class action in 2015 when a lower court judge ruled that the plaintiffs failed to show that Yamaha had knowledge of the alleged corrosion issue before the time of sale.

Almost two years ago, Evangelis helped ABM win reversal of a \$94 million wage-and-hour class action judgment that had been awarded to thousands of security guards who claim they were kept "on call" during rest breaks. A California appeals court overturned the trial court's decision by finding that state law does not require employers to relieve workers of all duties during breaks.

The case is currently pending in the California Supreme Court, which heard oral arguments in September.

--Additional reporting by Linda Chiem and Suevon Lee. Editing by Jill Coffey.