

Rising Star: Latham & Watkins' Gavin Masuda

By Dean Seal

Law360 (June 7, 2021, 2:04 PM EDT) -- Latham & Watkins LLP partner Gavin Masuda locked down an industry-shaking victory for Restoration Robotics in California state court last year and has deftly defended accounting firms and underwriter banks from major professional liability, post-IPO and merger-related litigations, earning him a spot as one of seven securities attorneys under age 40 honored by Law360 as Rising Stars.

WHY HE'S A SECURITIES ATTORNEY:

Masuda said he's always been interested in the complexities of finance and accounting, which he studied as an undergraduate around the time when the dot-com bubble burst in 2000. In fact, he'd originally been on track to become a certified public accountant.

But after realizing that his real interest was in the investigative side of the accounting world, which accountants don't typically get to focus on early in their careers, Masuda decided to "jump the line and go to law school, and use that as a means to go work at a place where I could get involved on those forensic aspects — the nitty-gritty — that goes along with litigation."

Lo and behold, in one of the first major cases Masuda took on as an attorney he represented a Big 4 accounting firm in a high-profile securities litigation over the largest bank failure in history.

"It felt like everything I had signed up for, because I got to come in and represent the Big 4 firm in this very significant and complicated matter that involved all of the complexities and all of the issues I'd been interested in throughout my collegiate studies," Masuda said.

HIS BIGGEST CASE:

Arguably the biggest case of Masuda's career was defending a Big 4 accounting firm against a proposed class action in Oregon federal court — along with five separate "mass actions" in Oregon state court — tied to the collapse of Aequitas Capital Management.



Gavin Masuda
Latham & Watkins

Age: 39
 Home base: San Francisco
 Position: Partner
 Law school: University of California, Hastings College of the Law
 First job after law school: Associate at Latham & Watkins

The U.S. Securities and Exchange Commission accused Aequitas in 2016 of defrauding investors with a \$350 million Ponzi scheme. Investors filed suit soon after, hoping to hold Aequitas' accounting firm liable for its association with the investment group's alleged fraud and asserting claims under Oregon's securities laws, which don't involve the same protections as federal securities statutes.

Masuda recalls that it was the first time in his career that he was really taking on first-chair responsibilities with witnesses and functioning more like a firm partner than an associate.

"I started from the ground up working with the accounting firm's witnesses, working with the auditors who were on the scene, really understanding the facts, helping them develop the accounting firm's defense to allegations in the cases, and really growing with them through the cases," Masuda said.

After narrowing the claims faced by the accounting firm with a series of dismissal motions in both state and federal court, Masuda spearheaded an aggressive discovery approach that involved over 100 depositions of "each and every plaintiff" asserting a claim against the firm.

"We were faced with an unfavorable law, so we had to go on the offensive," Masuda said. "We, through each of these depositions, went through a very rigorous line of questioning to establish that in fact our client had nothing to do with their decisions to purchase these investments."

Masuda ultimately helped develop a strategy to resolve the pending actions in cooperation with Aequitas' SEC-appointed receiver, leading to a global settlement involving seven defendants and hundreds of investors that was finalized in 2019.

MOST NOTABLE CASE HE'S WORKED ON RECENTLY:

Last September, Masuda and his Latham team successfully argued before a California state judge that the federal forum selection clause in Restoration Robotics' governing documents, which bars investors from taking claims under the Securities Act of 1933 to state court, was valid under California state law.

The ruling was a watershed moment in securities litigation in light of the U.S. Supreme Court's 2018 decision in *Cyan v. Beaver County Employees Retirement Fund*, which found that federal and state courts have concurrent jurisdiction over class actions based on Securities Act claims.

The *Cyan* decision spurred the public issuers to use so-called federal forum provisions, which until the Restoration Robotics ruling, had been untested outside of a March 2020 opinion from the Delaware Supreme Court that said state incorporation law does not prohibit the use of such provisions.

The Delaware court's holding was not binding in the courts of other states, leaving the California state judge to take up the question of federal forum provision enforceability in the 2018 investor suit alleging Restoration Robotics violated the Securities Act by issuing a misleading registration statement before going public.

"It did not occur to us initially that we would be the first case, nationally, to test how trial courts would react to federal forum selection clauses, but it ended up being that way," Masuda said. "Setting aside what the Delaware Supreme Court had said about Delaware law, we really tried to focus the court on California law, what the correct analysis under our law is, and by doing that, we were able to convince the trial court judge that under California law, the clause should be enforced here."

HIS ADVICE FOR YOUNGER ATTORNEYS:

Younger attorneys entering a BigLaw firm might feel like they don't have a lot of control over their careers, but according to Masuda, the opposite is true.

"It really comes down to being proactive," he said. "From the day you start your legal career, it really is incumbent upon you as an attorney to shape what your future looks like."

Masuda advises younger attorneys to reach out to the people they want to work with and seek out the matters they're interested in litigating. And while life as a young lawyer can feel very academic at times, never forget the "importance of people," he added.

"Your clients are people, your witnesses are people, your supervisors are people — so maintain your network and never let that side of the house go unattended to, because you never know where your next opportunity is going to come from," he said. "As easy as it is to just focus on work, never forget about the human aspect of the practice of law."

— *As told to Dean Seal*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2021 Rising Stars winners after reviewing more than 1,400 submissions. Attorneys had to be under 40 as of April 30, 2021, to be eligible for this year's award. This interview has been edited and condensed.