

Privacy Group Of The Year: Latham & Watkins

By **Pete Brush**

Law360, New York (January 13, 2014, 6:50 PM ET) -- Latham & Watkins LLP's privacy team burnished its reputation as a global ally for businesses handling increasing threats to their data — seeking rapid and discrete legal guidance — and secured key wins for clients including Delta Air Lines Inc., work that earned it a spot on Law360's list of Privacy Practice Groups of 2013.

In May, the \$27 billion airline, represented by Latham attorneys including Washington, D.C.-based Jennifer C. Archie along with Los Angeles-based David Schindler, used a theory of federal preemption to win dismissal of an “unprecedented” lawsuit brought by California's attorney general under a new law called the California Online Privacy Protection Act.

A California trial judge agreed with Delta's assertion that the state's claims improperly ignored federal law that bars states from applying consumer protection statutes to air carriers. That case is now before a state appellate court. A deadline for briefings is approaching in January and oral arguments are expected at some point after that.

The team also advises Delta generally on privacy and data security matters affecting its global operations, consistent with the airlines’ policies to voluntarily meet or exceed best practices. Whatever the outcome of the litigation, Archie said airlines that touch all over the word face especially thorny challenges in the privacy realm as a result of patchwork regulations and oversight.

"Day to day, the task is to keep step with diverse perspectives on fair information practices, at the same time the airlines are looking to make more targeted offerings, engage consumers on new platforms and devices and lower ticket distribution costs through mobile and online delivery systems," she said.

In another aviation industry win, the team, led by London-based colleague Gail Crawford, helped a major carrier take steps needed to implement a whistle-blower hotline across several European countries in order to ensure business practices compliance. The firm presented the airline with a set of requirements for the whistle-blower line and assisted with the negotiation of the services agreement with the hotline provider.

Alongside courtroom disputes, Archie along with Crawford — in cooperation with a team of more than 50 lawyers with feet on the ground in the United States, Europe, the Middle East and Australia — have also been in the trenches alongside corporate clients when “complete secrecy” was the coin of the realm.

Archie and Crawford teamed up to help supervise a \$50 million response on behalf of a multibillion-dollar global enterprise beset by what is believed to have been a state-sponsored cyberattack. Their role involved giving advice on project governance, insurance recovery, analysis of notification and reporting requirements in many jurisdictions and advising on the deployment of necessary security intelligence tools.

"On the data security side, when a breach affects corporate customers or individuals residing in every region of the globe, a single crucial step toward achieving global compliance is preparing a cross-functional incident response plan, covering all countries. After a breach happens, local reactions can vary from office to office and country to country within a large organization. Ironing out those issues before a crisis hits is hugely helpful," Crawford said.

Among Latham's other clients — by no means an exhaustive list — are US Airways Group Inc., Hoveround Corp. and other medical device makers, the chemical and agricultural biotechnology giant Monsanto Co. and private equity players including The Carlyle Group LP.

Latham lawyers including Archie, Crawford and Washington, DC-based Kevin Boyle have become so well-versed in the emerging — and not always well-understood — realm of cross-border privacy threat response that they are actively sought by corporate officers wanting guidance on the latest legal thinking.

Boyle, for example, was asked to present at an invitation-only meeting of chief information security officers from Fortune 1,000 companies and government agencies meeting at a global corporate security summit known as RSA Conference in February.

According to Boyle, Latham's experience and reach help the firm's clients avoid potentially costly "rookie mistakes" when threats or other privacy breach nightmares rear their ugly heads — often at inopportune times.

"We are usually immediately busy with standing up a calm, well-governed crisis management response which usually means protecting the 'crime scene', and assembling internal and external legal, technical, and communications resources necessary to manage the crisis and make decisions. Another immediate concern is getting a handle on required regulatory or individual notifications, because in some jurisdictions with some data sets the obligation is virtually immediate," Boyle said.

--Editing by Stephen Berg.