

MVP: Latham & Watkins' Michael Rubin

By **Ben Kochman**

Law360 (October 22, 2020, 8:11 PM EDT) -- Latham & Watkins LLP's Michael Rubin helped Facebook reach an agreement to end consolidated litigation over a cyberattack affecting 29 million users without paying monetary damages, while leading a team that secured a complete win for online advertising clearinghouse Turn Inc. in a long-running privacy dispute, earning him a spot as a Law360 2020 Cybersecurity & Data Privacy MVP.

HIS BIGGEST ACCOMPLISHMENTS THIS YEAR:

In February, a class of Facebook users whose accounts were improperly accessed in 2018 when hackers exploited a security flaw tied to a profile preview feature asked a California federal court to give an initial green light to a settlement resolving claims that Facebook negligently allowed the cyberattack.

Rubin is co-leader of the Latham team that helped Facebook reach a settlement that would not require the company to pay any monetary damages, with the tech giant instead agreeing to reform its security protocols to avoid future incidents. The proposed settlement, which is awaiting approval from U.S. District Judge William Alsup, came after Latham's team helped persuade the court to narrow the consumers' case to a single negligence claim, and, in November 2019, defeated certification of a class that had sought \$6 billion in damages for alleged identity theft.

Rubin also led the Latham team that, in September 2019, secured a dismissal of a proposed class action accusing the online advertising company Turn of placing undeletable "zombie" tracking cookies on Verizon users' mobile devices. The win resolved litigation that dated to 2015 and started in Mississippi federal court before ending up in California federal and state courts, carrying billions of dollars in potential legal exposure.

The Facebook and Turn cases were the subject of extensive media coverage, and, according to Rubin, the facts in each case were "blown out of proportion" by lawyers representing consumers.



"It is very easy for plaintiff attorneys to write fanciful complaints, and when they are talking about complex technologies, it's very easy for courts to believe those allegations," Rubin said. "It's a big accomplishment to be able to cut through all of that noise, and get to outcomes that get to the actual facts. To be part of two teams that did that this year was really satisfying."

HIS BIGGEST CHALLENGE THIS YEAR:

Rubin, who does both regulatory and litigation work, says he has been working closely with clients to stay up to date on the twists and turns related to the California Consumer Privacy Act, which in January became the first law in the U.S. to give consumers the ability to find out what data companies hold about them, to have this information deleted and to opt out of the sale of the data.

Determining the exact scope of the landmark privacy law has been difficult, however, industry attorneys say. California Attorney General Xavier Becerra submitted his office's final CCPA in June, while leaving several closely watched legal issues unresolved. And just months after the new law came on the books, California residents are set to vote on another ballot measure in November that would expand the law's scope.

"The pace of change in 2020 has accelerated, with the substance of my practice moving faster than ever," Rubin said. "My biggest challenge has been keeping up — and I have."

Staying in touch with his co-workers to continue serving clients even as firm members work remotely during the COVID-19 pandemic has presented its own significant challenges, Rubin added.

"I cannot be more proud of Latham, my teams and my associates for how they have risen to the challenge of working through this unbelievable time," Rubin said. "After all of these Zoom calls that we've been on together, in some ways I feel closer to them than ever."

WHY HE'S A PRIVACY AND CYBERSECURITY ATTORNEY:

Rubin said that he set out to be a technology lawyer the day that he graduated from University of Michigan Law School in 2000, without planning for or expecting his focus to later shift toward data privacy and cybersecurity cases in particular.

But as his tech industry clients continued to face challenges over how to handle their data — with regulators also taking an increased interest in privacy and cybersecurity — it was a natural transition to shift his practice to take on more cases in that area.

"When you have become a trusted counsel and trusted adviser to a company, and all of a sudden they are presented with a new set of challenges, it's not tremendously surprising that they would turn to you to deal with those challenges," Rubin said.

"I was focused on working on a disruptive area of the law, where things were not going to be static," Rubin added. "I got a lot more than I bargained for."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Rubin says he often advises up-and-coming lawyers to find a practice area that they are passionate about, and to seek out a mentor who has already achieved success in that field.

"Search for someone who has been down that road before and will be able to help guide you," he said. "Without that, it can be very hard."

Rubin added that newer attorneys should "relentlessly seek feedback" from their colleagues and immediately own up to mistakes, of which every lawyer is guilty at times.

"Trust is the most valuable thing you have as a lawyer, and if you lose that, you're lost," Rubin said. "Nobody expects perfection, but we expect good judgment and thoughtfulness."

— *As told to Ben Kochman*

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