

## MVP: Latham's Melanie Blunschi

By Jennifer Doherty

*Law360 (October 8, 2020, 2:39 PM EDT)* -- Melanie Blunschi of Latham & Watkins LLP helped Facebook avert \$6 billion in identity theft claims, steered Apple to preliminary victory against a class action regarding device security updates, and laid to rest allegations that "zombie" cookies were lurking on Verizon mobile devices, making her one of Law360's 2020 Class Action MVPs.

### **HER BIGGEST ACHIEVEMENT OF THE LAST YEAR:**

San Francisco-based Blunschi says one of her most gratifying wins over the past year was when her team wrapped up five years of litigation, saving their client, [Turn Inc.](#), from billions of dollars in potential exposure through the forensic analysis of a single cellphone.

In September, Blunschi got the last claims dropped against Turn, a digital clearinghouse for targeted advertising. Since 2015, Verizon users had alleged that Turn installed undeletable "zombie-" or "supercookies" on their devices to track their online activity, asserting \$750 in damages for each of the millions of Verizon users in New York and California.

With the federal case wrapped up, Blunschi and the Latham team filed a demurrer and served discovery in the California state case. They found that the opposition had gathered so little evidence against Turn that the team filed for sanctions, citing inadequate presuit diligence. As the other side sought to save its case by switching named plaintiffs, Blunschi asked to see the new class representative's phone, knowing it would contain no zombie cookies.

"The judge quoted 'My Cousin Vinny' back to me," Blunschi told Law360, referencing the classic trial film and the judge's line: "I'm not about to revamp the entire judicial process just because you find yourself in the unique position of defending clients who say they didn't do it."

"But then, he actually gave us exactly what we wanted, and before letting them file a new complaint, he gave us the opportunity to conduct a forensic investigation of the plaintiff's phone, which is really



incredibly unusual," Blunsch said.

With no zombie cookies to be found, the other side agreed to dismiss the action. In exchange, Turn agreed not to pursue further sanctions.

#### ***ANOTHER BIG SUCCESS:***

After an attack on Facebook affected 29 million users around the world, the social media giant turned to Latham as it faced 11 lawsuits with 16 plaintiffs and 10 causes of action, including a proposed class asserting \$6 billion in damages.

"We were able to chip away at the size and scope of that case with thoughtful, targeted discovery of plaintiffs," Blunsch said, countering conventional wisdom that discovery in a class action is the plaintiffs' domain.

Her team pared the consolidated cases first down to two plaintiffs with one claim, and then down to one plaintiff.

"Through the class certification process, based on the discovery we had taken, we were able to show that, when you look at what truthfully happened here, no one had actually suffered an injury," Blunsch said.

Both sides ultimately agreed to a no-damages settlement, currently pending preliminary approval, with Facebook promising to maintain improved security.

"Particularly in cases where there is either a speculative or kind of amorphous injury alleged, I think it's really important to make sure that you do examine plaintiffs to figure out whether there really is a harm that should be redressed or whether it's something more lawyer-driven," Blunsch said.

#### ***WHAT KEEPS HER MOTIVATED:***

"I love to be able to look at what could be a multibillion-dollar exposure and find the best way to efficiently and effectively get rid of it," Blunsch said.

Along with her wins in the Turn and Facebook cases, Blunsch pointed to her recent work for Apple as the kind of high-stakes litigation that keeps her invested in her work.

In January and August 2019, Blunsch twice shut down a proposed class action claiming software updates had caused the processors in iPhones, iPads and other products to slow down, causing the items to lose value.

"We had a challenge brought by plaintiffs' counsel who purported to represent everyone who had bought an Apple product in the last 10 years. So it was really gratifying to be able to show that that challenge was meritless and to be able to resolve that liability at that stage," she said.

Blunsch is currently gearing up for a third round as the case heads into appeal.

#### ***HER GREATEST CHALLENGE THIS YEAR:***

With cases as expansive and complex as the litigation Blunsch oversees, moving discovery online as teams headed home to ride out the COVID-19 pandemic was no easy feat.

"Shifting that to an environment where everyone is working from their home office, sometimes from their couch, on a laptop or home internet connection has required a greater amount of creativity," Blunschi said. "If you have to prep a witness by Zoom, it's certainly possible to prep them effectively, and my team has been able to do so, but it requires a different approach."

For example, to adapt document review to the new digitized reality, Blunschi has promoted a "surgical" approach, emphasizing efficiency in locating mission-critical information to prevent her team from getting bogged down with the technical difficulties and room for error that come with remote work.

#### ***HER ADVICE FOR JUNIOR ATTORNEYS:***

While 2020 has been a destabilizing year across the board, Blunschi advises new attorneys to throw themselves into their roles and stay alert to possibilities.

"We're in an unusual time right now, and that makes for a lot of opportunity. The more you can be the person who is the expert on a particular part of your case, the more you're going to be able to get more exciting opportunities to be the person who preps the witness or argues the motion — by Zoom, potentially," she said.

Difficult circumstances offer the opportunity for junior attorneys to show off their intelligence, motivation and readiness for a challenge, three traits Blunschi said she's always looking for when she staffs her cases, regardless of seniority.

"It's important not to get discouraged and to try to see it as an opportunity to continue to be creative solving problems and jump into to get the best results," she said.

— *As told to Jennifer Doherty*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2020 MVP winners after reviewing more than 900 submissions.*