

MVP: Latham's Michael Rubin

By *James Mills*

Law360 (October 10, 2023, 1:08 PM EDT) -- Michael Rubin of Latham & Watkins LLP's privacy and cybersecurity practice has worked on many notable cases throughout the year, such as guiding Apple through a dismissal of a punitive class action after the iPhone maker installed security updates that slowed down the processing speed of its devices, and obtaining a dismissal with prejudice from the bench in a class action over tracking software automakers installed by car data services platform Otonomo Inc., earning him a spot as one of Law360's 2023 Cybersecurity MVPs.

His biggest accomplishment of the past year:

Rubin confessed that he can't talk about his biggest accomplishments of the year. Those accomplishments are the ones that have to remain secret even though he would love to brag about them.

"Truly the most amazing results that we achieved this year are ones that happened behind the curtain," Rubin said. "They're the things that don't make the news; the cases that don't get filed; the regulatory investigations that start and then regulators are convinced, 'There's nothing to see here'; because we are able to have them dropped; the cases where we have the credibility because of the relationships we've built to convince them to say, 'We don't need to proceed here.' Or at the end of a full investigation to say, 'We're not going to enforce here.'"

However, his biggest "public accomplishment," as he phrased it, was the Apple processor litigation. A punitive class action was filed after Apple Inc. installed a security patch on iPhones, iPads and iPods which slowed down the processing speed of Apple devices in the early 2010s.

Rubin said the Ninth Circuit affirmed the district court's second dismissal of the case a few weeks ago, which he called an "extraordinarily important result."

"It raised really interesting, novel questions of what needs to happen and when disclosure should happen in the context of a security vulnerability," he said. "It is of paramount importance that device manufacturers like Apple, platforms and service providers that we use every day, be allowed to fix any



vulnerability as quickly as they can without announcing they are doing it ... without then being subject to litigation for the time period when they were fixing it."

His proudest moment of the past year:

Rubin said he was "hugely proud" of how the *Mollaei v. Otonomo* case turned out. In that case, a plaintiff's firm looked through the back catalog of the California state code and found a statute from the 1990s forbidding people from attaching tracking devices on cars. The firm then sued software company Otonomo Technologies which developed systems for cars and trucks, which when factory installed by automakers can monitor the vehicles and keep other vehicle data.

Rubin explained that since nothing physical was being attached to cars, the judge ruled the systems were not covered by the statute.

"It was an extraordinarily satisfying win and leaves one very proud indeed when you are able to convincingly write the motions, present the argument and then appear to the court and convince the judge from the bench on the first try to dismiss the case with prejudice," he said.

How he became a lawyer:

Raised in Washington, D.C., in a family of doctors, Rubin said he always wanted to be a lawyer. As a kid, he would walk around his house carrying a backgammon case as if it were a lawyer's briefcase. While he is the first in his family to become a lawyer, he did not set out to be a cybersecurity lawyer.

"I set out to be a technology lawyer and work with tech companies," Rubin recalled. "What drew me to tech originally is the same thing really that draws me to the area I practice in now: innovation. It was the ability to work with the most innovative companies on their hardest problems."

Why he became a privacy and cybersecurity attorney:

Rubin noted that when he started his practice in 2000, privacy and cybersecurity wasn't really on anyone's radar. But because he was a technology lawyer, he found it becoming more and more of an issue by the end of that decade.

"As my career progressed, and I was working in a different area of law on what was then the biggest barrier to innovation, I was really interested in working with clients. After finding success there, after building relationships, deep relationships with my clients, eventually they came to me and said, 'We have this other problem that we need help solving. We have this other set of massive cases, this other set of massive regulatory investigations around the world. Can you help us with that?' I said, 'Yeah, absolutely.'"

The types of cases he said he started working on included regulatory investigations in the U.S., overseeing regulatory investigations around the world, multidistrict litigations, and handling federal agency investigations such as by the Federal Trade Commission and Federal Communications Commission.

"Of course, the more you work on something, thousands of hours, the bigger of an expert that you become," he said. "That sort of became a trademark ... Obviously the world has changed, but I started down that path because I had established relationships with clients doing what I would call 'innovation protection work.' It was the risks to innovation that changed."

What motivates him:

Rubin reported that helping clients is what motivates him. He came to California after graduating from

the University of Michigan Law School to be a technology lawyer, to help foster innovation and to help clients move forward. However, nowadays being a cybersecurity lawyer is truly where he can help society and help foster innovation.

To him, what's "incredibly satisfying" is "the opportunity to help startups, unicorns, Fortune 50 companies and everyone in between figure out how to take their visions and implement them in a way that is consistent with the law, that's going to help them avoid getting tangled up with regulators that can then constrict their ability to move, plaintiff lawyers who are going to impose a different set of taxes on them, or other obstacles that get in their way."

"It's a worthwhile pursuit," he said.

His advice to junior lawyers:

He tells junior lawyers coming up to figure out what they're good at and then to do it. He would also tell them to figure out what they are passionate about. Ideally, what they're good at and what they're passionate about would be the same thing. However, sometimes the two don't line up.

"You need to find your skill and hone your skill," Rubin said. "There are certain things you can learn and certain things that can be improved over time. Our lives are long, our careers are long. It's really important to be good at your job, and it's really important to like what you're doing. If there is a real mismatch between your skill set and your passion, I would counsel someone to engage in serious self-reflection."

--As told to James Mills

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