

MVP: Latham's Serrin Turner

By Tracey Read

Law360 (October 31, 2024, 12:03 PM EDT) -- Serrin Turner of Latham & Watkins LLP led the team that recently succeeded in gutting a landmark U.S. Securities and Exchange Commission case against software developer SolarWinds Corp., earning him a spot as one of the 2024 Law360 Cybersecurity and Privacy MVPs.

His biggest accomplishment this year:

Turner represented SolarWinds in a case brought by the SEC alleging the Texas-based company committed securities fraud by minimizing the severity of a state-sponsored attack on its flagship product.

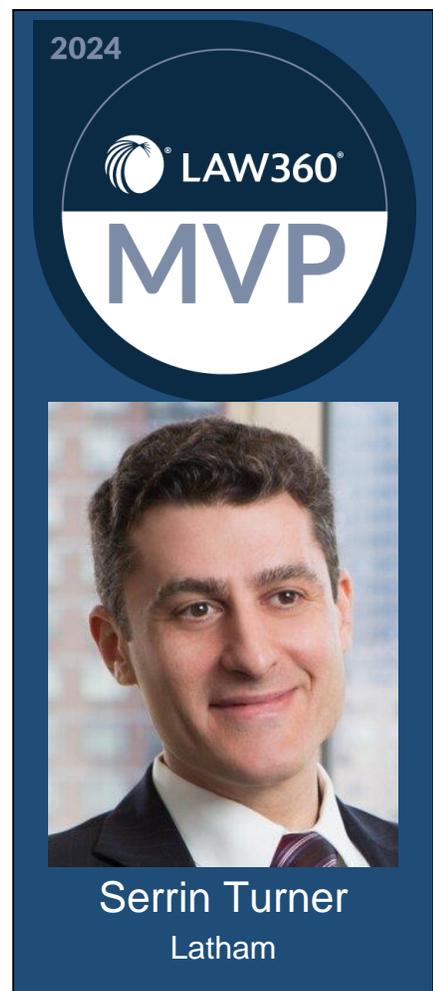
In 2020, the company disclosed that it had been hacked as part of a foreign espionage campaign linked to the Russian government, and its stock price dropped by approximately 25% over the following two days, according to the SEC. The hackers were reportedly able to breach the networks of several U.S. federal agencies that were customers of SolarWinds, including the U.S. Departments of Homeland Security, Commerce and the Treasury.

The lawsuit, filed last year, claims SolarWinds knew as early as 2017 that its cybersecurity practices were not to industry standards, but spent years publicly assuring customers and investors that everything was above board. The company went public in 2018.

In July, a New York federal judge threw out all SEC claims connected to SolarWinds' disclosure of the 2020 Sunburst attack, which compromised the networks of several federal agencies that relied on SolarWinds' software. U.S. District Judge Paul Engelmayer also dismissed the agency's internal accounting control claim, finding those allegations "impermissibly rely on hindsight and speculation."

The SEC was seeking disgorgement, civil penalties and an injunction, as well as to ban Chief Information Security Officer Timothy Brown, who was the first corporate executive to ever face claims in a cybersecurity disclosure case, from serving as an officer or director of a publicly traded company.

Turner told Law360 the decision to largely dismiss the SEC complaint was not just a victory for



SolarWinds, but for the industry as a whole.

"The SEC had brought suit based on several aggressive and novel legal theories in the case, and those theories really aimed at expanding cybersecurity disclosure requirements for public companies and aimed at giving the SEC broad authority to regulate the cybersecurity controls of public companies," he said.

And had the SEC succeeded on those theories, it would have greatly expanded its regulatory footprint in the cybersecurity space, Turner said.

"We think this was a really important victory," he said. "Hopefully the SEC will think twice before bringing a case based on similarly aggressive theories in the future."

His biggest challenge:

Turner said the biggest challenge for any lawyer in this industry is that it exists in an adverse, fast-changing regulatory environment.

"And especially for global companies, there isn't just one regulator that you have to concern yourselves about; there are lots of regulators that are almost competing to regulate in this space, and they are eager to bring enforcement actions and flex their muscle," he said.

Turner said regulators should change their approach by coming to the table with a healthy dose of humility — seeing that even the most secure government agencies have experienced high-profile hacks.

"This is an area where everyone should tread a little lightly," he said. "Instead, regulators too often engage in gotcha [tactics] in this space. By oversimplifying the facts, they're overstretching the law. That makes for a challenging regulatory environment to operate in, but it's also an environment where Latham thrives. We pride ourselves on the successful outcomes we've been able to achieve."

Why he became a cybersecurity attorney:

Turner originally got into his area of expertise while working as a federal prosecutor in the Southern District of New York, including time as a cybercrime coordinator.

"I quickly gravitated toward cybercrime, and I liked it because it was a new and rapidly evolving area," he said. "There wasn't as much of a set playbook, so you had to write a lot of the playbook as you go. There is creativity involved, and lots of interesting legal issues related to privacy and surveillance."

Turner said he was fortunate to litigate cases on behalf of the government, like a constitutional challenge to a foreign-intelligence surveillance statute used to authorize programs later publicized by whistleblower Edward Snowden.

Since his segue into private practice, Turner said there has been a lot of rapid evolution of the legal landscape.

"On the civil side where I'm at now, I work with my colleagues all the time on global matters, and that's been fun seeing how these issues are handled by regulators," he said.

Other notable cases:

Turner and his team beat a consolidated set of class actions alleging that Meta unlawfully collects data about user activity on third-party websites.

In August 2023, a California federal judge threw out consumer claims that Meta Platforms Inc.'s browser illegally tracks smartphone users who access the internet via the Facebook, Instagram or Messenger apps.

The plaintiffs brought the case less than a year before it was dismissed based on a blog post by a self-described security researcher, claiming the blog post showed that Meta was collecting data on users in the Facebook in-app browser even if they opted out of tracking under the App Tracking Transparency policy, according to the firm.

The court granted the motion to dismiss in full, and although plaintiffs were granted leave to amend, they agreed to drop the case.

"We had a really creative dismissal strategy that drew on materials that the plaintiffs cite in their complaint, and we used those materials to show that the plaintiffs' claims rested on confusion and speculation on their part," Turner said. "That one was a great early resolution that we were able to achieve, which obviously is what you're always striving to do."

Another important victory came while representing software maker Accellion, which was facing data breach litigation at both federal and state court. The cases stemmed from software vulnerabilities in an Accellion legacy product, which were exploited in a series of cyberattacks in December 2020 and January 2021, the firm said.

In February, Turner said nearly all the Accellion federal claims were dismissed, including all statutory damages claims. His team also secured an important precedent that the California Consumer Privacy Act's data breach provision does not apply to service providers.

In state court, Latham obtained dismissal of the Accellion case in its entirety. Turner's team also won dismissal of an indemnification lawsuit brought in Delaware Chancery Court by a business customer affected by the attacks, the firm said.

--As told to Tracey Read. Editing by Adam LoBelia.

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 2024 MVP winners after reviewing nearly 900 submissions.