

Cybersecurity & Privacy Group Of The Year: Edelson

By Joyce Hanson

Law360 (January 22, 2019, 11:23 AM EST) -- Edelson PC pursued headline-grabbing privacy suits in 2018 — suing Uber over a data breach, assisting a state regulator in a case against Facebook and Cambridge Analytica and winning class certification in a case claiming Facebook violated Illinois' Biometric Information Privacy Act — landing it among Law360's Cybersecurity & Privacy Groups of the Year.

The Chicago-headquartered law firm, led by founder and chief executive Jay Edelson, has gained a national reputation as a maverick in its commitment to pursuing big-ticket cybersecurity and privacy cases on behalf of consumers. But the CEO says the firm has intentionally stayed small, at just 28 attorneys, as it focuses on working with governmental entities to shape federal, state and city legislation involving Silicon Valley tech giants.

In the Uber Technologies Inc. case filed in late 2017, the City of Chicago and the Cook County state's attorney tapped Jay Edelson to serve as special city corporation counsel as well as special assistant to the people of the state of Illinois in their consolidated data breach and consumer fraud suit against Uber. Edelson claims in the suit pending in state court that Uber's poor security allowed hackers to access the data of 57 million users and that the company then attempted to cover up a 2016 breach by paying the hackers \$100,000 to keep quiet.

"This will sound odd coming from a plaintiffs' class action attorney, but our firm has actually been very uncomfortable with the nature of a lot of privacy settlements and has felt like the plaintiffs' bar has, to a large extent, failed, especially when it comes to settling data breach cases," Edelson said. "The big shift for us this past year has been to start representing regulators in data breach and privacy cases where we think that they can simply do a much better job in having a true impact. That's been our focus, and it's been really fun for us to get to wear some regulator hats."

Another focus for the law firm, which was founded in 2007, is slow and steady growth, according to the CEO, with future associates coming primarily from Edelson's summer associates program, which will take on five newcomers in 2019. The firm, selected last year as a Law360 Privacy Group of the Year and an Illinois Powerhouse, spends about three-quarters of its time focused on privacy and cybersecurity matters and opened a San Francisco office in 2015, Jay Edelson said.



And increasingly, the firm is joining government regulators in these cyber suits, according to Edelson. In litigation filed in March claiming that British political consulting firm Cambridge Analytica retained the private data of 50 million Facebook users during Donald Trump's presidential campaign, Edelson lawyers are representing Cook County State's Attorney Kim Foxx in the only action filed by a government regulator over this activity, he said.

"The Cambridge Analytica scandal has really made the conversations that we're having with regulators very different," he said. "The idea that people's personal information can be exploited to potentially swing a presidential election puts privacy in a different category."

Currently, the law firm is also working on a massive privacy suit against Facebook that in April won class certification for 6 million Illinois users for whom the social networking site created and stored facial recognition algorithms after June 7, 2011. The suit claims that Facebook has violated Illinois' stringent Biometric Information Privacy Act, or BIPA, with the illicit collection of facial recognition data for its photo-tagging feature. The suit went before the Ninth Circuit in May when Facebook asked the appellate court to find that the company's alleged conduct caused the class no actual harm.

Jay Edelson asserted that the case is quickly moving toward trial in the Northern District of California, despite the Ninth Circuit's current involvement, adding that Facebook faces tens of billions of dollars in potential exposure under BIPA, with statutory damages of up to \$5,000 per violation of the law.

"It is a very, very large suit, even by the standards of Facebook, and we got it certified," he said. "We expect that we'll get a good result from the Ninth Circuit, and we expect the case will be tried. That will be a very fun trial. We're paying a lot of attention to what Mark Zuckerberg testified to in Congress and are very interested in matching up some of the things he said with some of the things that we know."

He credits the firm's case development and investigations group, run by partner-in-charge Christopher L. Dore, for its ability to keep abreast of complex technological fraud and privacy violations. The group's internal lab of computer forensic engineers and tech-savvy lawyers studies fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention.

"We're not just reading the newspaper and saying, 'Oh there's a data breach,' and then filing a suit," Edelson said. "Our team is often figuring out that there's a problem even before it's publicly known. That's the type of thing which regulators are especially interested in, and we think they can do a lot of good there."

--Additional reporting by Cara Bayles, Diana Novak Jones, Shayna Posses and RJ Vogt.
Editing by Alyssa Miller.