

Titan Of The Plaintiffs Bar: Jay Edelson

By Allison Grande

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While working as a defense attorney in the late 1990s, Jay Edelson realized something was missing. So he built a plaintiffs' firm that offered just what he was craving — an environment where Taylor Swift's music and spirited rounds of Wii tennis go hand-in-hand with game-changing work in data security and privacy case law.

During the past decade, Edelson and his Chicago-based firm Edelson PC have fostered a reputation for their uncanny ability to come up with creative standing and damages arguments. Their unorthodox style has led to momentum-shifting rulings in challenges to the data security and information-gathering practices of companies such as LinkedIn Corp., AvMed Inc., ComScore Inc., and Spokeo Inc.



Jay Edelson

“He has taken on some of the biggest companies and law firms in the world, and has had success where others have not,” said Al Saikali, the co-chair of Shook Hardy & Bacon LLP’s data security and privacy group. “He’s making arguments that other plaintiffs firms are not making, and that kind of outside-the-box thinking is working in data breach and data privacy lawsuits.”

For Edelson, the journey to building a successful plaintiffs practice began with a quick visit to the other side of the courtroom.

When he began his legal career after graduating from the University of Michigan Law School in 1996, Edelson worked as a class action defense attorney at the now-defunct law firm Holleb & Coff, although he soon discovered that representing corporate clients was not for him.

“I realized that plaintiffs attorneys were having more fun,” Edelson said. “The biggest different for me is that on the plaintiffs side, you get to pick the cases, and if you’re not highly energized about the case, then you don’t bring it. But on the defense side, if a client asks, you have to handle it.”

So after a brief stint at plaintiffs' class action outfit Plotkin Jacobs & Orlofsky Ltd., Edelson teamed up with another defense firm defector, John Blim, to launch Chicago-based Blim & Edelson in 2000.

“One of my principal values is autonomy, so while I had some really great bosses, I’m just not built to work for other people,” Edelson said of his decision to start his own firm less than five years into his

legal career.

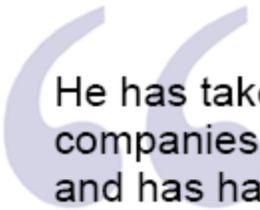
What has resulted from the desire to be his own boss is a firm with a culture unlike any many other attorneys have seen.

"It's part 'Entourage,' part startup," said Saikali, who recently visited the firm's Chicago headquarters for the first time.

The 20-attorney firm's office includes common work areas, a pool table, a video game room, a pingpong table that doubles as a conference table for meetings, and a dress code that embraces jeans and flip-flops. It also boasts a chef who makes lunch for the staff every day, including specialty protein and vegetable dishes for Edelson, who adheres to a paleo diet.

"I was wearing a suit during my interview for a job at the firm, and I was definitely overdressed," said Edelson partner Rafey S. Balabanian, who was one of the first associates brought into the firm in 2008.

The firm also features an eight-person in-house tech lab comprising lawyers and forensic engineers who test apps and other technologies that could raise privacy and consumer protection issues — a valuable asset to Edelson, who admits "if my TV isn't working, I tell my wife we have to move to another house."



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The office has a distinctive musical score as well.

"Taylor Swift is playing all the time, and when Rebecca Black puts out a new video, we're all gathered in the office watching it," Edelson said.

Ari Scharg, a partner at Edelson who joined the firm in October 2010 after working for two years at a mid-size defense litigation firm, recalled that the first time he went to the office, he was greeted by the sight of two attorneys discussing a legal issue in the lobby over "a spirited game of Wii tennis on a gigantic flat screen TV" — with several other attorneys cheering on a competitive pingpong match in the conference room.

"When I walked into the Edelson office space four years ago, everything I thought I knew about litigation and the legal industry went out the window," Scharg said. "I didn't see any suits or office libraries or closed doors. Just pure energy."

His first interaction with Edelson also left a lasting impression on Scharg.

— **AI Saikali**

Co-chair, data security and privacy group
Shook Hardy & Bacon LLP

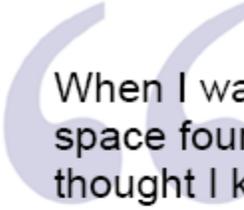
"When I was introduced to Jay, I was convinced that the firm was playing a joke on me," Scharg recalled. "I remember thinking that there was no way a guy this young founded such a high-powered class-action firm. Of course, I realized I was wrong as soon as he started talking with razor focus about his firm's core philosophies and outside-the-box approach to litigation."

Balabanian, who had been working at a commercial law firm and was ready to give up on the legal industry, also recalled being surprised by Edelson's "unorthodox" style of interview, which featured a pingpong match that Balabanian recalled Edelson won.

"He wasn't asking me about my grades and how I did on a particular motion for summary judgment or what class action experience I had," said Balabanian, who has since formed such a tight bond with Edelson that he and his wife are the godparents of Edelson's two children. "Instead, he sized me up and said that he thought in five years, I would be arguing our most important cases in court, and I told him he was crazy."

The unwavering confidence Edelson has in his attorneys has resulted in several milestone victories in the privacy and data security space.

"In this area, defendants are winning most of these lawsuits because they have strong standing and lack of injury and causation arguments," Saikali said. "But cases like the ones that Jay and his firm are bringing have been a big part of shifting the landscape so that plaintiffs are able to win on at least some of their counts."



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Edelson and his colleagues convinced the Eleventh Circuit in 2012 to take the unprecedented step of reviving a data breach suit against AvMed. In another case, he and the firm successfully advanced the novel theory that LinkedIn made security misrepresentations in its privacy policy to salvage claims in a data breach class action against the site.

Both victories led to the proposal of groundbreaking settlements, including a \$3 million pact approved in February in the AvMed case that marked the first time that plaintiffs who did not suffer identity theft were able to claim funds.

Edelson has also put new life into the more-than-two-decade-old Video Privacy Protection Act, and recently bolstered the reputation he received as the "Spam Slammer" for his early work in Telephone Consumer Protection Act litigation by winning certification of one of the largest-ever TCPA classes.

"While I stridently disagree with the theories he advances, which often strike me as hyper-technical issues where no one was harmed, I will say he is a tough adversary who has emerged as one of the most active players on the plaintiffs' side in privacy and information use class actions," said Michael Rhodes

of Cooley LLP, who has opposed Edelson in numerous high-profile cases, including the LinkedIn data breach class action and a VPPA dispute involving Sony Corp.

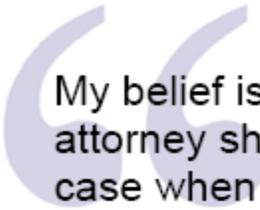
That view of Edelson is shared by others on the defense bar, including Saikali, who first met Edelson when he invited him to provide his views on a panel at a defense-friendly conference focused on cyber-liability issues. Edelson received the highest scores from the audience, and Saikali now counts Edelson as one of his most valued consultants on issues that arise in his personal practice, as well as part of the Sedona Conference's working group on privacy and data security, which the attorneys co-chair.

Saikali said the plaintiffs' attorney has injected the unpopular view into the working group's discussions that damages should be broad and are getting broader.

"Without his involvement, it would be easy for us defense attorneys to say that there are no damages," Saikali said. "The pushback is extremely valuable."

For his part, Edelson says that at the outset of litigation and during settlement negotiations, he strives to be as upfront with his opposition as early as possible.

"My belief is that a confident plaintiffs attorney should know the value of the case when they file, and shouldn't spend a lot of time posturing," he said. "So at the beginning of the litigation, we like to meet with the other side and lay all of our cards out on the table."



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The approach has led to rave reviews from opposing counsel, including Davis Wright Tremaine LLP partner Fred Burnside, who said, "I'd gladly have a beer with those guys, even though we strongly disagree on the law."

Balabanian recalled a specific instance in 2009 when Edelson's communication skills were on full display.

The firm at the time was pursuing dozens of nationwide class actions against all the major actors in the so-called mobile content industry, and after several key rulings in various jurisdictions, there was a push for a global settlement, according to Balabanian.

During a meeting with the defense counsel before mediation began, Edelson laid out his plan for a settlement. According to Balabanian, one CEO responded: "Jay, this all sounds well and good, but the fundamental problem is that you just don't understand our industry."

"Jay then proceeded to take over the white board and explain to these high-ranking executives why they needed a settlement," Balabanian said. "By the end of the all-day meeting, Jay had cleared the path to a

\$65 million settlement that provided landmark relief to the class, but also accounted for the defendants' very real business concerns. I don't think there is anyone [else] in the plaintiffs bar who could have put together that deal."

Balabanian noted that several of the companies that the firm had sued in those cases approached Edelson at the end of the matter to hire his firm to defend them going forward.

--Editing by Richard McVay.