

## Cybersecurity Group Of The Year: Mayer Brown

By **Ali Sullivan**

*Law360 (February 16, 2023, 2:02 PM EST)* -- From leveraging U.S. Supreme Court rulings to defeating trendy "session replay" litigation and obtaining for social media giant Meta an already influential biometric privacy ruling, Mayer Brown LLP left its mark on the privacy landscape in 2022 with wins that earned the firm's cybersecurity and data privacy practice a spot among Law360's 2022 Cybersecurity and Privacy Groups of the Year.

With more than 70 attorneys across the Americas, Europe and Asia, Mayer Brown's cybersecurity and data privacy practice called on its deep experience and breadth of expertise to defeat categories of cases through creative defenses, the practice's attorneys told Law360.

Take the February 2022 dismissal of a so-called session replay suit against General Motors. As lead counsel, Mayer Brown fended off allegations that GM violated the California Invasion of Privacy Act by tracking website visitor's keystrokes, mouse movements and more — class action claims that have become commonplace in states with all-party consent wiretap laws.

Building on the Supreme Court's 2021 ruling in *TransUnion v. Ramirez*, itself the "progeny" of Mayer Brown's win in the 2016 *Spokeo v. Robins* high court decision, the firm successfully argued that the plaintiffs had not alleged a concrete injury to establish standing, said John Nadolenco, managing partner at the firm's Los Angeles office.

"When we handle cases we for sure look for ways to defeat the particular case, but if you look back at our history, we often also develop ways to defeat slews of cases," Nadolenco said.

Rajesh De, who leads the cybersecurity and data privacy practice, credits the group's success to a multidisciplinary and global approach that allows Mayer Brown attorneys to tackle cases internationally and across the cybersecurity industry. The spectrum of experience across the practice helps, too, with attorneys' backgrounds spanning the public and private sectors.

In 2022, the practice added former U.S. Federal Trade Commission attorney Chris Leach and leading data privacy lawyers Dominique Shelton Leipzig and Arsen Kourinian.

And their reach is not limited to litigation. De said the firm helps clients create privacy frameworks and



respond to data breaches and has helped to shape privacy legislation on state, national and global levels.

Some of the litigation with which the firm is involved deals with policies Mayer Brown has helped to develop and implement, De said.

"That means our lawyers and our teams, more importantly, can really bring a perspective to any law — whether it's how it was developed, how it's being implemented or how plaintiffs are looking to use it as a weapon in a way that it wasn't intended," De said.

In a year that saw plaintiffs leverage biometric privacy laws to pursue class action suits, Mayer Brown swatted down two actions against social media giant Meta.

The first, brought by a proposed class of Instagram users, accused the platform of illegally harvesting users' facial data in violation of Illinois' Biometric Information Privacy Act. As co-counsel representing Meta, Mayer Brown successfully moved the court to compel arbitration in the case in April based on Instagram's terms of use.

"We draw on this very long history of being subject-matter experts in that space — enforcement of arbitration clauses and, particularly, in consumer cases," said Matthew Provance, a partner in the firm's Chicago office.

The practice scored another win for Meta in a similar suit, this time brought by nonusers of Facebook, who contended that the social media giant violated their biometric privacy rights in using facial recognition on nonusers who appear in uploaded photos.

In granting summary judgment to Meta in April, U.S. District Judge James Donato found it "patently unreasonable" to construe BIPA as requiring Facebook to get consent from nonusers who were "for all practical purposes total strangers to Facebook" — a ruling that has already become influential, Provance said.

"We see that being cited by all types of defendants in other BIPA suits, even though it's only a district court ruling," Provance said.

Judge Donato tossed the remainder of the suit in November for lack of standing.

Mayer Brown also obtained a quick win for Alphabet Inc.'s self-driving car subsidiary Waymo LLC in its effort to block the release of certain information in the company's application for a permit allowing its cars to be deployed on public roads. Facing a public records request for that application, which Waymo said contained sensitive trade secrets, the company sued the California Department of Motor Vehicles in January 2022 to stop the disclosure.

One month later, a Sacramento County Superior Court judge granted an injunction to keep certain safety data and details of the self-driving technology private in a ruling that was "a big deal for Waymo and the entire autonomous vehicle industry," Nadolenco said.

In the financial services sector, the firm aided BECU, formerly Boeing Employees' Credit Union, in defeating class action lawsuits alleging negligence in the wake of a data breach reported last year by a BECU printing vendor. While financial services companies like BECU make up the largest segment of the

firm's client base, the industry is just one segment of the practice's work, De said.

"Some of the most significant business organizations trust us with their cyber and privacy agenda," he said.

While session replay and BIPA suits have become increasingly fashionable in privacy litigation, De says he anticipates 2023 will see increasing litigation regarding connected products and services and continually evolving cyberattacks.

"There is no doubt this space of cybersecurity and data privacy will be prominent in legal circles in 2023, more so, frankly, than in any year before," De said.

--Editing by Peter Rozovsky.