

## Privacy MVP: Reed Smith's Mark Melodia

By **Greg Ryan**

*Law360, New York (December 12, 2011, 8:25 PM ET)* -- It's a common dilemma: A company suffers a data breach, and one of its customers launches a class action. Reed Smith LLP partner Mark S. Melodia helped one client find an uncommon solution, staving off traditional credit monitoring and saving it cash — the sort of inventive thinking that landed him a spot on Law360's list of Privacy MVPs.

Melodia, the leader of Reed Smith's global data security, privacy and management practice, represented UniCare Life and Health Insurance Co. and WellPoint Inc. in a proposed class action related to a 2007 server breach that temporarily made UniCare customers' personal health information accessible on the Internet. The plaintiff demanded identity theft insurance and money for finance monitoring in a suit that ultimately landed in Illinois federal court.

Melodia hoped to avoid what he calls the “reflexive, knee-jerk credit monitoring offer” proffered so often in similar class actions. So, working with plaintiff's counsel, he helped craft a settlement in which UniCare agreed to pay for the monitoring of websites where personal information is bought and sold. Credit monitoring was largely reserved under the deal for class members who had their Social Security number breached.

The novel arrangement will cost UniCare less than a traditional credit monitoring service, according to Melodia. The court approved the claims-made agreement in September.

“It was a creative solution, one that could very much become a trendsetter,” Melodia said.

The deal was not the first innovative settlement the 23-year legal veteran has struck in the privacy arena. When he represented Certegy Check Services Inc. in breach litigation in the mid-2000s, he helped his client reach a settlement that called not for credit monitoring, but for the monitoring of check activity — an area Certegy specialized in, Melodia said. Certegy now markets the product it devised to implement the settlement, according to Melodia.

In fact, the Princeton, N.J.-based partner has emerged as a giant in the fast-growing field over the past half-decade, delivering litigation victories or favorable settlements in 40 privacy-based class actions in the past year alone.

A trio of Melodia's litigation victories this year came on behalf of clients E\*TRADE Financial Corp., Skype Inc. and Phillips North America Corp. in Arkansas court. The companies stood accused of breaking state anti-hacking laws through their use of local shared objects, or so-called flash cookies.

Melodia led a dozen-firm defense in the proposed class actions on behalf of companies from across the country. Along with another attorney, he designed and argued the companies' motion to dismiss the litigation, he said, an effort that led a judge to order the plaintiffs to be more specific in their allegations.

In their reconstituted claims, the plaintiffs identified the cookies they believed violated state law. The new details allowed Melodia and his team, including Reed Smith colleague Steven B. Roosa, to embark on a series of technical meetings with opposing counsel on behalf of E\*TRADE, Skype and Phillips. Melodia's team contended that by claiming such common cookies were illegal, the plaintiffs were essentially trying to "criminalize the Internet," Melodia said. The strategy worked.

"The plaintiffs had to admit that there's a line between benign and malicious uses of local shared objects," Melodia said.

The plaintiffs voluntarily dismissed their claims against Melodia's three clients in October, handing them a no-pay, walk-away victory, he said. The litigation is ongoing against other defendants not represented by Melodia.

Melodia's signature was also on Reed Smith's victory before the Seventh Circuit in September, when the court affirmed a ruling that West Publishing Co. could obtain drivers' personal information from motor vehicle departments for the purpose of reselling it to legally authorized parties. Melodia has defended West in similar matters nationwide, including before the lower court whose decision the Seventh Circuit upheld.

The next 12 months look to be just as busy for Melodia. He is representing Science Applications International Corp. in litigation brought in federal court by Tricare beneficiaries whose personal information was allegedly stolen in a recent data breach. About 5 million people were affected by the breach, the largest loss of personal health information ever recorded, according to Melodia.

Melodia said he has found success in the privacy arena by matching a background in trade secrets with the knowledge he has gained in defending financial services companies in consumer class actions.

"I think what works is marrying up that procedural experience with a sensitivity to the sort of information-based practice that I've always found interesting and I've always been around," he said.

--Editing by Lindsay Naylor.