

MVP: BakerHostetler's David A. Carney

By Allison Grande

Law360 (September 14, 2021, 1:53 PM EDT) -- BakerHostetler partner David A. Carney has helped Excellus BlueCross BlueShield stave off a proposed class of customers seeking to recover damages over a data breach and Assured Imaging LLC escape claims over a ransomware attack, earning him a place among Law360's 2021 Cybersecurity & Privacy MVPs.

HIS MAJOR ACCOMPLISHMENTS:

Carney, a member of the firm's privacy and digital risk class action and litigation group, has spent nearly a decade steering major health care companies and insurers through the novel legal issues of the burgeoning data security and privacy landscape, and the past year has been no different.

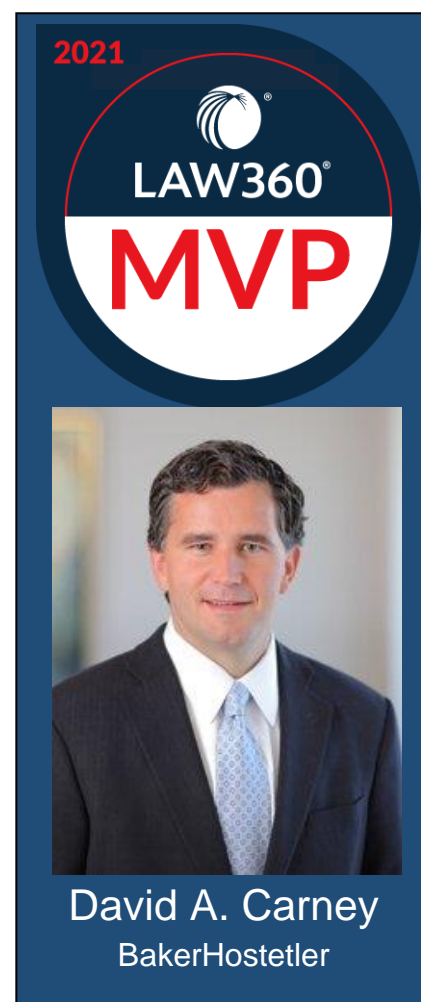
In November, a New York federal judge agreed with arguments advanced by Carney and his colleagues that plaintiffs couldn't certify four proposed nationwide classes seeking damages for a 2015 data breach at Excellus that affected more than 9.3 million individuals.

The judge found that individualized questions regarding timing and the extent to which proposed class members were impacted by the incident doomed certification of the proposed classes, although the court did allow a class seeking only injunctive relief to move forward. The Second Circuit in April denied the plaintiffs' petition for interlocutory review of the ruling.

Carney has also guided his clients through the recent surge in ransomware attacks fueled by the COVID-19 pandemic.

An Arizona federal judge in May dismissed a proposed class action brought against Assured Imaging over a May 2020 ransomware attack, agreeing with Carney's team that the injuries the plaintiffs claimed they suffered — including an increased risk of future identity fraud, decreased value of their personal information and an alleged overpayment for medical services — were insufficient to establish Article III standing to move forward with their claims.

And in June, a Massachusetts Superior Court judge sided with briefing led by Carney that plaintiffs



suing UMass Memorial Medical Center over the exposure of personal information swept up by a ransomware attack on its software provider Blackbaud Inc. lacked standing to proceed with their claims.

Carney told Law360 that being unable to get everyone in the same room to hash out issues due to the pandemic has made his work especially challenging. But he said he was most proud of how his team has found ways to persevere and grow during the past year.

"I can't say anything better than what has been said many times before about the times we are all experiencing, and the toll they have taken on so many different levels," Carney said. "As a group, we've been able to kind of figure things out and find ways to support one another that have been a large part of any successes we've had."

The "continued disconnectedness" is "a small complaint in the grand scheme, but hopefully we can all beat this virus soon and get things back to a point where in-person is the norm rather than the exception," he added.

WHAT MOTIVATES HIM:

While he's motivated by "a lot of different factors," the major driving force for Carney at the end of the day "is just the basic desire to do a good job," he said.

"At some point it begins to sink in what it means that people place their faith in us as attorneys, in a lot of times under what are not the most ideal of circumstances," he said. "Just to kind of honor that faith and try to represent them well in all respects."

Carney said he also draws significant inspiration from the lessons learned from his oldest daughter, Kate, who died in September 2015 at the age of 8.

"She set a pretty high charge for all of us to keep," he said.

Carney recalled that while going through "a difficult stretch generally with a lot of things going on" this past January, he and his team had an important order come through in a case that "helped alleviate things."

"The docket entry number on the order was 29, which was Kate's soccer number," Carney said. "[That was] probably the best [moment], when you can kind of look at Kate's picture and feel like she is smiling back."

WHY HE'S A CYBERSECURITY & PRIVACY ATTORNEY:

Carney, who's based in the firm's Cleveland office and was named a rising star by Law360 in 2016, got his start in the cybersecurity and privacy field in August 2013, when a floor cleaning machine and four desktop computers — one of which contained approximately 4 million Social Security numbers — were stolen from a health care provider's administrative office in the middle of the night.

"I was asked to help out on the litigation that followed, and have been focused on privacy and cybersecurity litigation ever since," Carney recalled.

Despite the passage of time, Carney said he and his colleagues are still being faced with "the same basic questions [today] that we confronted then," including what harm flows from being notified of a data

security incident and how and why the law should compensate any particular individual for that harm.

"In any number of different contexts regarding any number of alleged privacy violations, these basic questions remain at the forefront of the case," he said.

HIS ADVICE FOR JUNIOR ATTORNEYS:

In navigating the complex legal issues they're sure to face, attorneys would be best served to find the part they love the most and strive to "take advantage of that whenever you can," according to Carney.

"It's not always an easy job, but those moments can help ease the way through everything else," he said. "And hopefully that kind of basic enjoyment for things can shine through and aid in the advocacy as well."

Aside from his privacy and data security work, Carney said he's been fortunate to work with the Frederick K. Cox International Law Center at Case Western Reserve University School of Law on two Hague Child Abduction Convention cases before the U.S. Supreme Court.

"They are unique cases in that a child's best interests are at stake, placed against the international comity issues that flow from being a party to one of the more important treaties in private international law," he said. "In both instances that has been a unique and rewarding experience, not only to learn a new area of the law but also to gain the perspective that comes from working with attorneys who have practiced in that area for a lot longer than me."

— *As told to Allison Grande*

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 2021 MVP winners after reviewing nearly 900 submissions.