

## MVP: Morgan Lewis' Beth Herrington

By Chart Riggall

*Law360 (October 12, 2023, 1:23 PM EDT)* -- Beth Herrington of Morgan Lewis & Bockius LLP steered major changes in the interpretation of Illinois' Biometric Information Privacy Act, landing her a spot among Law360's 2023 Cybersecurity & Data Privacy MVPs.

### ***Her biggest accomplishment:***

Over the past year, Herrington secured significant wins on behalf of Amazon, Microsoft, and BNSF Railway in class actions brought under BIPA, the 2008 law that regulates the collection and handling of Illinois residents' biometric data.

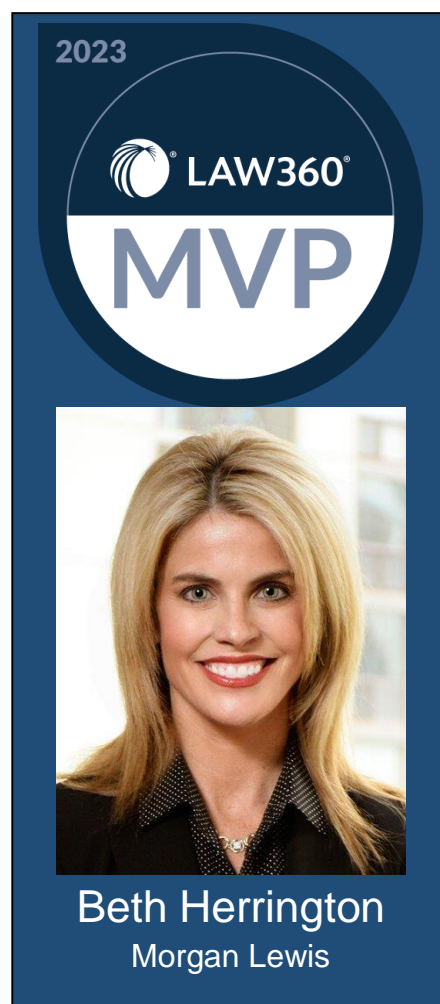
In Amazon and Microsoft's case, plaintiffs had accused them of downloading about a million photos to mine their biometric data. Herrington, however, was able to defeat this case of first impression on summary judgment by securing a ruling that none of the alleged violations had occurred in Illinois, and that BIPA could not be applied beyond state lines.

"Those favorable rulings were the first summary judgment decisions in defendants' favor in BIPA class actions," she recalled. "They helped clarify that BIPA cannot be applied extraterritorially to defendants operating outside of Illinois."

For BNSF, meanwhile, Herrington led the team in the first certified class action under BIPA — centering on the company's use of a fingerprint-based security system — to go to trial. A jury initially awarded the plaintiffs \$228 million, but Herrington wasn't done yet.

"The jury sided with the plaintiffs, but the damages were far less significant than the billions the plaintiff sought," she said. "But the most important thing there is, we filed a post-trial motion seeking to vacate the judgment, and we convinced the court to set aside the judgment and order a new trial on damages.

"Now, of real significance to clients facing other similar lawsuits, the judge found that damages under the BIPA statute are discretionary. That's a development for not just that particular client in that case, but that favorably influences the BIPA landscape going forward," she added.



### ***Her biggest challenge:***

In the cybersecurity and privacy realm, Herrington said, constant change is the name of the game, and keeping up with the latest developments — legal, technological and otherwise — keeps attorneys plenty busy.

"I work in a practice area that is very hot, with privacy laws springing up all over the world, and cybersecurity and ransom attacks still going strong. With new data and privacy regulations coming into effect so frequently these days, companies and their counsel are often left with questions about what standards they're supposed to uphold," she said.

One of Herrington's chief tasks is making sure that clients, judges and jurors are able to grasp that shifting ground.

"That can be particularly challenging for global technology entities, since they must deal with different rules in their various places of operation. So we stay on top of those legal developments and help clients navigate a sometimes very challenging, and changing, legal landscape," she added.

### ***What motivates her:***

Herrington makes no bones about the fact that she thrives in the combat of the courtroom.

"The cases that we are litigating are challenging ... and I personally love being on the front lines in helping our clients manage risks in the privacy area," she said. "I am definitely a scrapper, [an] on-my-feet type of litigator. We are in the courtroom arguing cutting-edge, first-impression issues in the privacy area. That's what I really thrive on."

But Herrington added that she also takes pride in delivering results for clients.

"What's most important to me is surpassing a client's expectations, [and] delivering excellent work product and results. If a client trusts us on matters that are of importance to them, we really want to live up to that trust," she said.

"I feel extremely fortunate to have the opportunity to work on consequential cases, and I'm tremendously privileged to work with great clients," Herrington added. "My favorite cases involve not just the cutting-edge legal issues, but also deep connections made with clients and colleagues while working on high-stakes cases. When you're in the legal trenches with someone, there's a lot of pressure, but it also forges incredibly close bonds."

### ***Her advice for younger attorneys:***

Working in a hot and rapidly developing practice area, Herrington advised that the attorneys who will be most successful in the cybersecurity space are those who aren't afraid to dive into its complexities.

"No generation is more prepared for the seismic changes that are afoot than the young lawyers who educate themselves on the larger trends in society. Those that ask themselves how that will translate to the legal work — that will be needed in the future. Junior attorneys should not be intimidated by the technical aspects of data privacy and cybersecurity issues," she said.

"Helping distill complex concepts and the details of emerging technology — down to a simple description for the court — is exactly what I think our Morgan Lewis team does best," Herrington continued.

*--As told to Chart Riggall*

*Law360's MVPs of the Year 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 2023 MVP winners after reviewing more than 900 submissions.*

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