

## **MVP: Weil's Drew Tulumello**

By **Hailey Konnath**

*Law360 (November 7, 2024, 12:02 PM EST)* -- Weil Gotshal & Manges LLP's Drew Tulumello helped PepsiCo Inc. and subsidiary Frito-Lay Inc. fend off multiple proposed class actions under the Illinois Biometric Information Privacy Act, and got a \$228 million damages award against BNSF Railway Co. in BIPA litigation wiped out, earning him a spot among the 2024 Law360 Class Action MVPs.

### **His biggest accomplishment:**

Tulumello said his biggest accomplishment over the past year was the win he helped secure for BNSF in Illinois federal court. BNSF was accused of unlawfully scanning and storing the biometric information of thousands of truck drivers — who landed the \$228 million damages award after a first-of-its-kind jury trial. However, Tulumello persuaded the court to vacate the award and grant a new damages trial.

The parties settled before the new trial could happen. That allowed BNSF to reach "a very favorable resolution at a fraction of the award," Tulumello said.

"We were able to rescue the client from this very unfair result," he said. "And that was extremely gratifying."

On top of that, Tulumello pointed to a win he helped secure for United Therapeutics, which was facing Racketeer Influenced and Corrupt Organizations Act claims brought by Humana and United Healthcare. The claims came in the wake of the settlement of a U.S. Department of Justice case targeting donations made by drug manufacturers that help cover high co-payments patients need to make to secure insurance coverage for pricey medications.

"The insurers alleged that this was fraudulent by United Therapeutics because it was essentially forcing the insurers to cover patients when the insurers might not have had to if the patients hadn't been able to afford their copays," Tulumello said.



Tulumello was able to get all the cases tossed with prejudice by making the novel legal argument that the antitrust "indirect purchaser" standing rule should apply to RICO claims. Under that rule, indirect purchasers are typically barred from pursuing monetary damages under federal antitrust law.

### **His biggest challenge:**

Evolving with the constantly changing landscape and new laws and regulations regarding privacy — particularly privacy and class actions — was a challenge over the last year, Tulumello said.

"The pace of technological innovation, the speed of advancement with artificial intelligence and the need to preserve privacy for consumers — all of those trends are going to collide," he said. "And for lawyers advising companies trying to navigate all of these trends, it's extremely exciting, but it's also extremely challenging."

In particular, there have been significant verdicts and settlements in cases brought under Illinois' landmark BIPA, Tulumello said. California has also adopted a new set of privacy protections and regulations regarding the protection of consumers' personal information, he noted. Given the sheer size of the California market, many companies "have to be there," Tulumello said.

"Compliance there is usually a key consideration for multinationals, and they've been driving a lot of the privacy and technology agenda," he said.

### **Why he's a class action attorney:**

Tulumello said he enjoys class actions because that sort of litigation presents not only the substance of the matter to contend with but also complicated procedural pieces, like class certification and jurisdictional issues.

"I really like the dual complexity of the procedural issues that arise in class actions and also the substantive meat and potatoes of defending a lawsuit," he said.

Class actions typically involve "the most cutting-edge, new legal issues," Tulumello said. "And they're significant because they aggregate the claims of lots and lots of people. That means that the stakes and the exposure are extremely high."

Tulumello added that his practice is defending companies that he respects and believes are "innovative and doing great things."

"Being able to have the privilege of representing them in challenging environments like that is gratifying," he said.

### **His advice for junior attorneys:**

Tulumello said junior attorneys should focus on improving their skills every day.

"Try to get a little better every day at writing or research or depositions or witness interviews," he said. "Focus on skill-building and let everything else be incidental to that."

In other words, Tulumello said, junior attorneys should focus on becoming "the best lawyer you can be."

"Things like partnership and promotions and, later on, attracting clients — all of that will come," he said.  
"But the key is to stay focused on the vocation, on the craft."

*--As told to Hailey Konnath. Editing by Amy French.*

*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 2024 MVP winners after reviewing nearly 900 submissions.*

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