DATA BREACH CLAIMS: FROM CLASS ACTIONS TO SHAREHOLDER LAWSUITS TO GOVERNMENTAL INVESTIGATIONS AND HOW D&O INSURANCE CAN PROVIDE PROPER COVER

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Introductions

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Agenda

- Trends in data breach cases
- Insurance coverage for securities suits following data breach notifications
- Increase in event-driven securities suits
- Insurance coverage for government proceedings/investigations
- Audience Q&A
TRENDS IN DATA BREACH CASES

- Plaintiffs’ struggle to allege damages
- SEC guidance on public company cybersecurity disclosures
- Statutory damages
- Exclusions in GL Policies
- Plaintiffs’ attorneys shift to securities-related claims
- Failure to notify about cyber security issues
- Securities suits following data breach notifications
SECURITIES SUITS FOLLOWING DATA BREACH NOTIFICATIONS

- Wyndham
- Home Depot
- Target
- Yahoo
- Marriott/Starwood
- Equifax
- Chegg, Inc.
- Others(?)
RESURGENCE OF SECURITIES CLASS ACTIONS

- Event-Driven Litigation – Claims arising from adverse developments in companies’ operations. Differs from traditional model of filing lawsuits based on financial misrepresentations.

- Cyan Effect – Supreme Court holding that state courts retain concurrent jurisdiction for 1933 Act lawsuits

- Uptick In IPOs – Newly formed companies particularly susceptible to lawsuit when facing setback following IPOs

- Changing Plaintiffs’ Bar – New aggressive plaintiffs’ firms taking the approach that there is no “too small to sue”
INCREASE IN EVENT-DRIVEN SECURITIES CLASS ACTIONS

- Data breach notification
- Wildfires
- Plane crash
- Other privacy violations – Facebook
- Sexual misconduct claims
SECURITIES LITIGATION
INSURANCE COVERAGE
IMPLICATIONS

- Definition of “Securities Claim”?
- “Bump Up” Exclusion
- “Criminal/Fraudulent Conduct” Exclusion
- “Bodily Injury” Exclusion
- “Professional Services” Exclusion
GOVERNMENT PROCEEDINGS AND INVESTIGATIONS
INSURANCE COVERAGE IMPLICATIONS FOR GOVERNMENTAL PROCEEDINGS

- When is there a “Claim” for a “Wrongful Act” triggering coverage under D&O Policy?
- “Pre-Claim Inquiry” Coverage
- Investigations Coverage