

Client Alert:

Securities Suits Arising from the General Data Protection Regulation – Cyber Risk is D&O Risk

The European Union General Data Protection Regulation (“GDPR”) is intended to safeguard the data and privacy of European Union citizens. However, the GDPR is leading to seemingly unintended consequences to companies’ business operations and financial results.

Overview

These consequences highlight the need for insureds to carefully consider their fiduciary duties with respect to its corporate cybersecurity provisions and financial disclosures accordingly. Recent examples underscore the potential impact that the GDPR may have on corporate financial performance, and illustrate the need for continued diligence to be taken to protect organizations from unintended consequences of the enactment of the GDPR.

Since mid-2018 at least two securities class actions have been filed against companies related to GDPR compliance. The securities class actions have included allegations that the subject companies made misrepresentations regarding readiness for the GDPR, that revenue would be negatively impacted by the GDPR, that operating results may suffer due to GDPR-related expenses, and that the GDPR may impact the company’s fundamental business model. These securities class actions have followed massive stock drops, and in at least one example have led to the resignation of senior leadership.

Discussion

The GDPR was intended to safeguard private information, and it was anticipated that the GDPR could lead to complaints about regulatory actions from privacy-related issues. It is certainly possible, even likely, that these types of claims may arise. The GDPR is but one signal of regulators’ intense focus on cybersecurity and privacy compliance initiatives; other examples include the U.S. Securities & Exchange Commission’s Cybersecurity Disclosure Guidance, as well as recent California privacy laws. However, compliance with the GDPR’s strict mandates is impacting companies’ cost structure and, in some cases, business models, directly affecting financial performance. The Chicago Tribune and Los Angeles Times, for instance, have ceased operations in Europe due to the challenges of complying with the GDPR. It is perhaps an unintended (and unforeseen) consequence that recent securities claims are based upon corporate

financial performance, not a breach itself and not a specific regulatory action. It is again quite possible, even likely, that additional claims against other companies alleging an impact to financial performance is likely. This underscores the need for insureds to not only consider their cybersecurity controls and disclosures, but also evaluate their Directors’ & Officers’ Liability Insurance (“D&O”) program to obtain adequate limits, robust coverage terms, and appropriate coordination with Cyber Liability exposure and insurance.

Conclusion

As previously predicted, the still nascent GDPR requirements are now driving D&O liability. Coverage for GDPR-related fines & penalties, specific to management liability, is available. Aon additionally has dedicated resources to help address cyber liability arising from the GDPR. To discover more, please visit: aon.com/gdpr.

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If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.

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