

can include coverage for an informal investigation that does not meet the normal definition of a claim. For example, the SEC will often bring an informal investigation to request documents, regardless of whether there is an identifiable wrongful act.

- **Forum selection provision.** When filing a registration statement before an IPO, companies should talk to their attorneys about including a “forum selection provision” that pre-selects certain states in which a case can be brought. Selecting a federal forum, for example, would keep plaintiffs from shopping their cases in more liberal state courts like California. But be warned. Because the legal repercussions of *Cyan* are so new, a forum selection provision is still untested. Whether it would hold up in court is uncertain at this point.

Given the difficulties of defending securities claims in multiple state courts, it’s critical for directors and officers to make sure they work with insurance brokers who can analyze and strategically assimilate lessons learned from the current litigation landscape to protect against the exposure associated with *Cyan*.

This is the second and final installment. To read part one in this blog series, click [here](#). To connect with the author by email, click [here](#).

TAGS:

Executive Liability

Professional Liability