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GC Cheat Sheet: The Hottest Corporate News Of The Week

By Sue Reisinger

Law360 (October 29, 2021, 4:13 PM EDT) -- Cybersecurity and tech issues dominated this week's news. One regulator told Congress that consumers need more financial privacy protections from Big Tech, while an insurance survey showed that risk professionals are more concerned about cyberattacks than ever.

These are some of the stories in corporate legal news you may have missed in the past week.

CFPB Chief Fears Growth of Big Tech 'Surveillance State'

The Consumer Financial Protection Bureau's director **told senators** Thursday that Silicon Valley technology giants are turning the U.S. "into a bit of a surveillance state" through their command of consumer data and suggested that financial privacy protections need updating.

Appearing before the Senate Banking Committee, CFPB director Rohit Chopra doubled down on concerns he expressed the previous day to House lawmakers about the inroads that large technology companies like Facebook and Apple are making into the financial services arena.

"Our country is turning into a bit of a surveillance state when it comes to some of these tech companies," Chopra said, adding they already have a wealth of information on consumers' browsing history, location data and health status that could be merged with detailed spending data harvested by their payment platforms.

Not only does this data access reinforce the market power of these companies over smaller, would-be rivals, but it also can give the tech giants an edge over traditional financial institutions that strictly comply with Gramm-Leach-Bliley Act privacy protections on customer data usage, according to Chopra.

Businesses Challenged to Build More Resilient Cyber Systems

A Zurich Insurance Group survey of risk professionals **found** that 83% of respondents carried cyberinsurance, the highest percentage in the 11-year history of the survey, and that building systems more resilient to cyberattacks will be one of the toughest challenges for businesses in the future.

Released Wednesday, the survey suggested insurance underwriters will want to see more frequent cybersecurity checks to monitor more closely what aspects of digital systems could be vulnerable, Zurich said.

While respondents were most likely to perform security checks every month — representing 31% of those surveyed — even that could leave organizations ill-prepared to meet modern cyber threats, Zurich said. About 50% of respondents said they assessed their company's risk to cyber events either on an annual or quarterly basis.

"While many respondents expressed confidence in their preparation, it is by no means universal," Zurich said in the report. "Considering the current state of the insurance market, risk managers will find pre-breach mitigation planning and excellent cybersecurity controls to be mandatory for underwriters."

Deputy AG Unveils New Tack for White Collar Enforcement

Deputy U.S. Attorney General Lisa Monaco on Thursday **unveiled** a tougher approach toward white collar enforcement at the U.S. Department of Justice.

In a speech to the American Bar Association's 2021 White Collar Crime National Institute Summit in Miami, Monaco said that companies would have to turn over everything and everyone to get credit for cooperation, and that even unrelated prior misconduct would be taken into account when prosecutors are determining resolutions of corporate cases.

Monaco laid out three initiatives that the DOJ is taking to enhance corporate criminal enforcement, and said more reforms were under consideration.

In a return to the so-called Yates Memo guidance, Monaco said that going forward, companies that hope to gain credit for cooperation must turn over all nonprivileged information about individuals involved in the wrongdoing at issue, regardless of their position, status or seniority.

Fla. Sues Biden Admin. Over US Contractor Vaccine Mandate

Florida sued the Biden administration on Thursday challenging a requirement that employees of federal contractors and subcontractors will be required to be fully vaccinated against COVID-19, **arguing** that the mandate exceeds federal authority.

In the suit, Florida says nothing in the Federal Property and Administrative Services Act of 1949 — which was cited in the mandate — authorizes "such a radical intrusion on the personal autonomy of American workers."

And the manner in which the vaccine requirement was enacted "violates fundamental principles of administrative and procurement law," according to the suit. The Office of Management and Budget is implementing the vaccine requirements, but the Federal Acquisition Regulatory Council is the only agency that can create governmentwide procurement regulations, according to the suit.

"They're really rewriting contracts, and they're transforming normal contracting into basically public health policy, and that's not anything that Congress has ever authorized," Florida Gov. Ron DeSantis said Thursday at a press conference announcing the lawsuit.

2 Nominees Seen as Barrier-Breaking Advocates for FCC

President Joe Biden's choice of Jessica Rosenworcel and Gigi Sohn to fill two Federal Communications

Commission vacancies sets diversity precedents at the agency while positioning it to tackle thorny issues affecting consumers, **experts say**.

If confirmed by the Senate, Rosenworcel would be the first woman designated as permanent chair of the agency, and Sohn would be the first openly LGBTQ commissioner at the FCC. Their tenures would follow that of former FCC Chairman Ajit Pai, who was the first Asian American to lead the agency.

"It's kind of a breath of fresh air, in a number of respects," said Marc Martin, chair of the Perkins Coie communications industry group in Washington, D.C. "It's not your usual FCC leadership."

For some members of the telecom bar, Tuesday's appointments underscore how important it is for people to see themselves reflected in their regulators. Increased diversity at the FCC also means that regulators may be more likely to pay close attention to issues affecting marginalized communities, said Sarah Morris, director for New America's Open Technology Institute.

What to Know About the CLO for Trump's Social Media Co.

Lori L. Heyer-Bednar oversaw one of Roetzel & Andress LPA's largest national litigation practices for years. Now, the Florida native **will join** a new social media company championed by former President Donald Trump after he was banned by Twitter and Facebook.

Heyer-Bednar was named the new outfit's chief legal officer in a merger agreement between Trump Media & Technology Group and Digital World Acquisition Corp. on Oct. 20.

Digital World Acquisition hopes to help bring the former president's platform, Truth Social, to fruition after Trump was exiled from both Facebook and Twitter shortly after his comments on the platforms during the Jan. 6 insurrection at the U.S. Capitol. After rioters had occupied the building for more than five hours, the former president tweeted that the group should "remember this day forever."

In a statement, Trump said the new company would "stand up to the tyranny of Big Tech" and that it was "founded with a mission to give a voice to all." Truth Social is expected to launch its platform publicly in the first quarter of 2022, with a beta launch expected in November for invited users.

What General Counsel Should Know About Monitorships

No company welcomes having a corporate monitor looking over the CEO's shoulder, but the general counsel can make the experience less painful and more valuable to the organization.

Preston Pugh of Crowell & Moring LLP, who is currently monitoring an unnamed organization, said the most important thing a general counsel can do "is to think about costs, cooperate, and understand what the monitor's job is, and is not." Pugh is a partner in the firm's Washington office, where he focuses on internal investigations, governance and compliance.

"The monitor's job is not to relitigate the case," he said. "Advocacy is finished. The longer that the company fights the idea of having a monitor, the less progress can be made."

As to cost, Pugh said, companies are always concerned that "someone you are paying on a monthly basis might really run up the check. By and large that doesn't happen." But he acknowledged that it has happened occasionally, which is why the general counsel needs to watch costs and reassure

management.

Law Firms Favor Tech Investments to Meet Clients' Needs

Legal professionals say they are more likely to invest in practice management software than office space in the future, suggesting that law firms are changing their priorities to meet the demands of today's corporate clients, according to a recent report.

About 67% of respondents in the Legal Trends Report released Tuesday by Themis Solutions Inc., which does business as legal case management giant Clio, said that practice management software accounted for a moderate or large expense, which is more than any other category. Furthermore, 61% indicated that they are more likely to spend on additional practice management software in the future.

Only 23% of respondents said that office space is currently a large expense, and even fewer, about 9%, said that it should continue to be a large expense in the future, which indicates that firms may be less likely to spend a lot of money on new office space.

George Psiharis, Clio's chief operating officer, told Law360 Pulse that consumer demand for remote-enabled legal services is pushing law firms to invest more in technology than in office space. "The strongest force that's pulling law firms along is client expectations, and client expectations moving very quickly," Psiharis said. "In years past, what might seem like innovative or forward-thinking approaches on the part of the law firm, now it just seemed to be very table-stakes expectations among clients."

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