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### TECHNOLOGY AND INSURANCE LAW ALERT INSURANCE COVERAGE FOR CYBER ATTACKS

Companies relying on general liability and other standard form insurance policies to protect themselves against claims arising from cyber attacks and other types of data breaches may be in for an unpleasant surprise.

Following a series of cyber attacks by computer hackers that resulted in the theft of personally identifiable information and credit card account numbers of customers of Sony Corporation's online gaming and entertainment networks, one of Sony's insurers, Zurich American Insurance, filed a declaratory judgment action in state court in New York for a determination that Zurich is not obligated to defend or indemnify Sony for claims asserted in class action lawsuits or in connection with investigations by the Federal Trade Commission and state attorney general's offices arising out of the cyber attacks. *Zurich American Insurance Company v. Sony Corporation of America*, Index No. 651982/2011 (Sup. Ct., N.Y. County, filed July 20, 2011).

According to Zurich's complaint, the class action lawsuits allege that the named plaintiffs and putative class members suffered losses as a result of the theft of their personal and financial information, Sony's delay in notifying them of the cyber attacks and the shut down of the services following the attacks. The breaches potentially affect over 100 million customers and twelve million credit and debit card accounts.

Zurich alleges in its complaint that the class action lawsuits and various investigations do not arise out of claims for "bodily injury," "property damage" or "personal and advertising injury" and therefore are not covered under Sony's comprehensive general liability or umbrella insurance policies with Zurich and that certain exclusions in the policies exclude coverage for the claims.

The lawsuit is a sobering reminder for businesses within and outside the technology sector that general liability and other standard form insurance policies normally do not cover cyber attacks and other types of data breaches. Cyber insurance, where available, may be an option, although premium costs are generally high and coverages are often limited.

Companies need to determine what customer and other sensitive data are at risk and review their existing policies to determine to what extent they are protected against losses and claims arising from the loss or theft of the data.

After evaluating their loss exposures and the extent of any existing coverage, the availability of cyber insurance should be thoroughly explored and coverages need to be tailored accordingly.

We are available to provide counsel concerning these issues, as well as other technology-related issues. For additional information, please contact the attorney named below or the attorney with whom you have a primary relationship.

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This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

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