Two things businesses, general counsel should keep an eye on in 2017

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Guest Contributor

As we turn the calendar on a new year, it’s a good time for general counsel and all business executives to assess the risks and opportunities that lie ahead. For energy companies, concerns are international as we look for price stability and trading opportunities.

In speaking with my colleagues around the globe on the energy front, we share a lot of concerns. Everyone is looking to see if OPEC sticks to its promise to reduce output and at the same time we’re anxious to see to what extent the new administration loosens restrictions on U.S. energy production. In the courts, we are all monitoring the outcome of the Sabine Oil & Gas Chapter 11 bankruptcy case, which is testing to what extent a distressed energy company can reject gathering agreements. The outcome potentially devalues midstream companies’ trading shares and could have an immense effect on energy investment and trading.

1 DIGITAL SECURITY IS A TOP LEGAL CONCERN

Globally, beyond commodity prices, I find that the top risk management concern of legal advisers is digital security. We live in what might be considered an international data security market, and the hackers looking for their next target don’t honor national boundaries. While the hacking issue has been clouded by partisanship the past few months, it’s clear to risk managers that international hacking is reaching new heights and no business can consider itself safe. The presence of state actors undermining data security – not just Russia, but also China and others – is a sobering development for businesses with international interests.

If you haven’t already done so, update your data security and crisis management plans. Most companies have plans on the shelf but threats constantly change and your plans must evolve as often as a field general’s battle plan. Start with the team, which should include not just the technical experts, but a representative of top management, every department that touches data and the legal and crisis communication departments. Obviously, prevention is the goal, but you must anticipate the aftermath of a breach, which will include possible class actions, tarnishing of your brand and compliance with a multitude of state and federal laws that dictate how you must clean up such a mess. Twenty-eight states introduced legislation last year dictating how businesses must handle data breaches.

2 REGULATION IS THE WILD CARD

The wild card of 2017 is regulatory change. The new administration has promised to roll back much of the regulation that many businesses believe has done more harm than good. President Trump has indicated that the Affordable Care Act will be the first on the chopping block, with parts of the Dodd-Frank Act, some Environmental Protection Agency regulations, trade agreements and corporate tax rates not far behind. For now, the only sure thing is uncertainty in the coming months.

Don’t get too giddy about regulatory change. Campaign rhetoric will run up against the wall of real-world politics. Some of these laws, particularly the Affordable Care Act, will be difficult to unravel and we may see one set of complicated regulations replaced with another. One thing is sure: lawyers will be busy this next year helping firms anticipate and adjust to these changes.

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