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The Impact of Cyan On Public Companies and the D&O Insurance Marketplace, Westlaw

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Blue Apron, the "meal kit" service that delivers prepackaged ingredients and recipes to its customers, went public June 29, 2017, offering 30 million common stock shares on the New York Stock Exchange. By most accounts, its initial public offering grossly underperformed, as its share price fell substantially in the months after it began trading.

In late March 2018, Blue Apron was trading at less than $2 per share, an 80 percent drop from its initial trading price of $10 per share. Predictably, Blue Apron has been hit with multiple securities class action lawsuits alleging that it failed to adequately disclose material information. Among the allegations are claims that Blue Apron violated federal securities laws, including the Securities Act of 1933.

Securities class actions like these are oftentimes expensive to litigate, and they can lead to significant losses for the companies involved. The U.S. Supreme Court's recent decision in Cyan Inc. v. Beaver County Employees Retirement Fund is likely to have a significant impact on the targets of these suits — and by extension, their insurers.(1)

In Cyan, the high court reaffirmed that state courts have concurrent jurisdiction with federal courts to adjudicate securities class actions brought under the '33 Act. This expert analysis examines the court's rationale in Cyan, the impact the ruling is likely to have on securities class actions, and the potential alternatives to litigating a '33 Act case in state court. It also considers the implications of Cyan for directors and officers insurance providers.

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