

Gunderson Dettmer Webinar: Speaking of AI: What Can You Do to Avoid Trouble in Disclosures, Litigation, and Regulatory Scrutiny

Thu, Apr 3, 2025

Alexa Belonick: Well, introduce myself briefly, I am Alexa Belonick, a partner at Gunderson. Detmer in the San Francisco office. I'm with our public companies and public offerings practice.

6

00:00:55.120 --> 00:01:13.769

Alexa Belonick: and I am delighted to have on the line with me today our friends at Caten. I am particularly going to introduce Bruce Spanio. He is the co-chair of the Securities Litigation Department at Caten, and organized this webinar for us, which I know folks will find really helpful, so I will kick it over to Bruce

7

00:01:14.380 --> 00:01:21.100

Bruce Vanyo: Thank you, Alexa, so welcome everyone, and including those just straggling in now.

8

00:01:21.390 --> 00:01:31.810

Bruce Vanyo: So we're going to talk today about a subject that is, of course, not much talked about these days. That is, of course, AI,

9

00:01:32.170 --> 00:01:36.839

Bruce Vanyo: which everyone is talking about, and I suspect

10

00:01:37.120 --> 00:01:42.790

Bruce Vanyo: most people are fearful about, both in terms of their job and the future. And

11

00:01:42.980 --> 00:01:49.029

Bruce Vanyo: whether this, whether the movie, the Terminator, is going to end up being not fiction, but a prediction

12

00:01:49.390 --> 00:01:51.989

Bruce Vanyo: of the future for this this world.

13

00:01:52.540 --> 00:02:06.480

Bruce Vanyo: So do you have any doubts about AI being on the lips of everyone? My 6 year old granddaughter approached me the other day, and said, Grandpa, can you teach me how to use AI

14

00:02:06.600 --> 00:02:07.150

Paul Yong: Okay.

15

00:02:07.290 --> 00:02:14.189

Bruce Vanyo: I I was stunned. I almost fell over. I didn't want to tell her that I need to learn how to do it before I could teach her.

16

00:02:14.370 --> 00:02:21.470

Bruce Vanyo: and I said, So that's something your teachers talking about. And she said, No, that's like all the kids are talking about it

17

00:02:21.960 --> 00:02:25.620

Bruce Vanyo: to me. That's astounding that it's it's gone to that level.

18

00:02:26.610 --> 00:02:38.679

Bruce Vanyo: It it offers wonderful possibilities in many fields. It also presents many potential disasters from criminals and

19

00:02:39.190 --> 00:02:44.550

Bruce Vanyo: AI itself, taking over and making obsolete human beings so.

20

00:02:45.340 --> 00:02:49.630

Bruce Vanyo: But those are philosophical and oh.

21

00:02:49.860 --> 00:02:59.689

Bruce Vanyo: religious and other subjects that we're not planning to cover today. So let me kick it off by 1st introducing the panel.

22

00:02:59.940 --> 00:03:05.440

Bruce Vanyo: and then, and I'll go in the order in which they're going to speak. So 1st

23

00:03:05.610 --> 00:03:09.669

Bruce Vanyo: is my partner in Los Angeles. Polygon.

24

00:03:10.390 --> 00:03:17.599

Bruce Vanyo: always partner in our La office, votes his time to primarily securities. Litigation.

25

00:03:18.760 --> 00:03:21.910

Bruce Vanyo: Next, I think, is Christina Costley.

26

00:03:22.090 --> 00:03:24.680

Bruce Vanyo: who is also headquartered in la

27

00:03:25.100 --> 00:03:33.090

Bruce Vanyo: and devotes, although she actually works out of Santa Barbara. If any of you are closer to that territory.

28

00:03:33.310 --> 00:03:43.370

Bruce Vanyo: she, this absolutely devoted to securities, litigation, phenomenal phenomenal lawyer in general.

29

00:03:44.170 --> 00:03:46.690

Bruce Vanyo: and then we have my co-chair.

30

00:03:47.540 --> 00:03:51.220

Bruce Vanyo: Mike Dipper, who is located in Chicago.

31

00:03:52.080 --> 00:03:59.380

Bruce Vanyo: He does both civil securities, litigation, and uncivil sec practice.

32

00:04:00.850 --> 00:04:04.530

Bruce Vanyo: Of course, is a subject of great discussion today in light of

33

00:04:05.750 --> 00:04:10.980

Bruce Vanyo: our current President has done to the Sec. And Michael to comment on that.

34

00:04:11.420 --> 00:04:17.240

Bruce Vanyo: And then, last, but, like not least, we have Don King, who is

35

00:04:17.579 --> 00:04:25.799

Bruce Vanyo: actually located in Silicon Valley, and we'll be working largely from there, even though he's assigned to our Los Angeles office.

36

00:04:26.402 --> 00:04:35.879

Bruce Vanyo: He. Don has a lot of experience in all facets of securities, litigation, including Delaware breach of fiduciary duty matters, and the like.

37

00:04:36.230 --> 00:04:38.249

Bruce Vanyo: So let's kick it off this call.

38

00:04:39.480 --> 00:05:06.009

Paul Yong: All right. Thank you, Bruce. So the 1st slide. Why is AI important? So like Bruce said. I think by now we all have a basic understanding of AI, and why it's important, given its proliferation, you know, across business. And you know society at large. So I don't need to belabor these points. But even though AI has been at the forefront of public discourse for what seems like

39

00:05:06.270 --> 00:05:18.070

Paul Yong: honestly ages at this point. When it comes to litigation. We're we're often a little slow to the game, and part of this is due to the time lag, because, you know, at least for securities, litigation.

40

00:05:18.565 --> 00:05:28.639

Paul Yong: Plaintiffs. Lawyers need to wait for a stock price drop, and then the cases, as many of you know, slowly crawl through the courts. But in the past, you know.

41

00:05:29.060 --> 00:05:50.229

Paul Yong: year or so. We've seen a real proliferation of AI as being one of the primary targets. For the plaintiffs bar you know, in the past. Let's call it the Pre Chat chat, gpt era you know. There were a sprinkling of cases here and there, but they were kind of oddballs and and outliers.

42

00:05:50.907 --> 00:05:56.339

Paul Yong: and sort of ancillary to the traditional claims we've seen. But that has changed

43

00:05:56.920 --> 00:06:10.139

Paul Yong: the plankton spar is currently testing all different types of theories. Related to AI, and Christina is, gonna you know, touch on that later in the presentation.

44

00:06:10.532 --> 00:06:34.080

Paul Yong: But I think something to notice that. You know the plaintiffs lawyers aren't focusing on just, you know, the obvious targets for AI, you know, companies like supermicro even though supermicro has been sued. But mentally, I think everyone should be sort of prepared because everyone is fair game. Now, because of just how deep AI is integrated.

45

00:06:34.498 --> 00:06:36.439

Paul Yong: You know, in within companies.

46

00:06:36.880 --> 00:06:45.590

Paul Yong: And, as as Bruce said, AI has also become a focus of the sec, which Mike differ former formerly at the sec. Will touch on in a bit.

47

00:06:47.630 --> 00:06:58.174

Paul Yong: so you know, long story short, AI related litigation and list. The risks associated are here now, and companies and lawyers really need to think about.

48

00:06:58.890 --> 00:07:03.470

Paul Yong: you know, things like disclosures when it comes to AI, and as you can see from this slide.

49

00:07:04.046 --> 00:07:17.139

Paul Yong: AI related risk. Factors increased 280%. And and that's 2,024. So this is somewhat old news. So I I'm sure that trend is just continued.

50

00:07:17.791 --> 00:07:20.398

Paul Yong: So the reality is right.

51

00:07:21.360 --> 00:07:25.849

Paul Yong: we need to really all sort of think long and hard about how

52

00:07:26.392 --> 00:07:30.259

Paul Yong: you know how we deal with AI in terms of our disclosures.

53

00:07:30.708 --> 00:07:32.399

Paul Yong: To what extent are we?

54

00:07:32.730 --> 00:07:46.620

Paul Yong: I guess. Outsourcing, decision making and all of this is compounded as Bruce was alluding. Because there's sort of this philosophical paradox, I know we're not here to talk about philosophy, but where?

55

00:07:46.980 --> 00:08:04.460

Paul Yong: Not as it just, it's not just emerging. But in many ways we don't. As human beings fully understand how it really works. Right? We can look at the inputs, we can look at the outputs, but we don't often know what is actually happening under the hood.

56

00:08:05.152 --> 00:08:14.569

Paul Yong: So this is why this area is, you know, honestly, quite nuanced and quite complex, and and will continue to be evolving as the technology does

57

00:08:15.476 --> 00:08:34.770

Paul Yong: so just in terms of you know what we're gonna go through like, I said. We'll go through some of the some examples of some cases. And then talk about some of the lessons learned thus far. And then what are the action items for the future which I think own will handle at the end of this.

58

00:08:35.570 --> 00:08:49.759

Paul Yong: So next slide, I'm just going to just go over this fairly quickly, and this is just an example of one of the 1st wave of theories that the planktist bar has been exploring

59

00:08:50.425 --> 00:08:59.429

Paul Yong: from both a non securities, litigation, perspective. Here it's contractual and equitable claims. And then looking at how that has been sort of transformed

60

00:08:59.580 --> 00:09:03.040

Paul Yong: by the securities plaintiffs bar to bring.

61

00:09:03.200 --> 00:09:06.290

Paul Yong: you know, higher dollar securities, class actions.

62

00:09:07.990 --> 00:09:23.669

Paul Yong: So in the healthcare industry or health insurance industry, I don't know if everyone is aware of this, but insurers have been started using AI predictive tools to provide input on whether to deny claims or not.

63

00:09:24.304 --> 00:09:29.039

Paul Yong: And one of the insurers that has been using these AI tools

64

00:09:29.703 --> 00:09:33.807

Paul Yong: was humana and there are others, too.

65

00:09:34.510 --> 00:09:40.030

Paul Yong: But for humana they were sued in a class action. The class was

66

00:09:40.180 --> 00:09:56.119

Paul Yong: a class of Medicare enrollees, and the claim is that they have been using this AI predictive tool, which is called Nh. Predict to improperly and systematically deny post acute care, coverage

67

00:09:57.650 --> 00:09:58.670

Paul Yong: the

68

00:09:58.910 --> 00:10:06.749

Paul Yong: the complaint brought claims for breach of contract, breach of the duty of good faith and fair dealing, and then some equitable claims as well.

69

00:10:07.803 --> 00:10:11.680

Paul Yong: There were allegations that you know human

70

00:10:11.950 --> 00:10:27.220

Paul Yong: position. Judgment was being replaced by AI that was allegedly highly inaccurate. The claim is that 90% of the denials that were made by this AI tool were subsequently that were subsequently appealed were then reversed.

71

00:10:27.490 --> 00:10:42.659

Paul Yong: There are also allegations that humana had banked on the fact that only 0 point 2% of patients, I guess appeal denials. So. And it was also unclear how this AI tool was actually making these determinations.

72

00:10:43.200 --> 00:11:00.780

Paul Yong: Right? So the plaintiffs bring brief contract theory, you know, theory being that humana fails, provide the coverage promised under the plan breach of the duty of good faith and fair dealing because they were systematically prioritizing. You know these perceived financial savings over

73

00:11:01.190 --> 00:11:04.539

Paul Yong: the patient's medical needs and then

74

00:11:04.750 --> 00:11:13.159

Paul Yong: equitable claims for unjust enrichment and injunctive relief, basically asking them to stop. You know, in order to stop using this tool.

75

00:11:14.590 --> 00:11:20.880

Paul Yong: obviously, I don't need to explain why this is an appealing fact pattern for the plaintiffs bar

76

00:11:21.660 --> 00:11:40.830

Paul Yong: and you know, other health insurers have been hit with similar lawsuits, including everyone's favorite insurer united health. That was a joke. And you know, they're facing an almost identical lawsuit in both humana and unitedhealthcare case. United health Cases

77

00:11:41.170 --> 00:11:58.000

Paul Yong: motions to miss were filed, they were denied which itself is not so uncommon in regular civil litigation. But these cases are marching on full steam, and obviously they are you know, very enticing for for plaintiffs, lawyers.

78

00:11:58.950 --> 00:12:03.550

Paul Yong: So now let's move on to sort of the securities litigation, part of this

79

00:12:04.148 --> 00:12:15.880

Paul Yong: and when it comes to securities, litigation, right? The core concern is, what are the companies disclosing? Or perhaps you know more importantly, what are they not disclosing to the market

80

00:12:16.340 --> 00:12:18.079

Paul Yong: regarding the use of AI

81

00:12:18.626 --> 00:12:31.623

Paul Yong: so last year a securities class action was filed against humana, the theory being the same thing. We just talked about right that humana had been using AI tools to deny care.

82

00:12:32.660 --> 00:12:36.450

Paul Yong: in a way that match the company's true medical utilization costs

83

00:12:36.650 --> 00:12:58.570

Paul Yong: here, right in the security setting the lawsuit centers on the public statements that the company made to investors in the market, that the medical utilization rates were, quote unquote, better than expected. Interestingly, the alleged misstatements during the class period did not mention AI. They did not mention this this

84

00:12:58.590 --> 00:13:11.130

Paul Yong: AI tool. But right? There was the sort of positive statements about utilization rates and you know the impact on the company's financial performance from these increased utilization.

85

00:13:13.310 --> 00:13:19.310

Paul Yong: This case is very new. The motion to speak. Smith is still being briefed.

86

00:13:19.905 --> 00:13:21.060

Paul Yong: So we are

87

00:13:21.670 --> 00:13:38.560

Paul Yong: very interested in seeing how this one turns out, because I think when it comes to fact patterns this one is it sort of hits on a little bit of a visceral level, right? Because there's something all of us sort of feels a little bit uncomfortable about the idea of

88

00:13:39.168 --> 00:13:41.540

Paul Yong: you know, AI making these, you know.

89

00:13:42.170 --> 00:13:45.195

Paul Yong: sometimes life or death decisions.

90

00:13:45.910 --> 00:13:58.060

Paul Yong: but and so it sort of presents sort of a kind of an extreme fact pattern that you know. I think that a judge or could be quite sympathetic to

91

00:13:58.764 --> 00:14:09.520

Paul Yong: so with that I'm gonna pass on to Christina, who's gonna talk about some other cases and other situations that are happening in securities, litigation regarding AI

92

00:14:10.150 --> 00:14:38.409

Christina Costley: Thank you, Paul. So, as Paul said, these cases are very young, this area of law is really in its infancy. And because of that today I'm going to talk a little bit about some cases that have not yet reached the critical motion to dismiss stage, and that still exist only as allegations made by the plaintiff's bar. Of course, in that situation it doesn't mean that these are good theories, or that they're theories that will survive a motion to dismiss.

93

00:14:38.560 --> 00:14:54.920

Christina Costley: There have been a handful of cases decided to date, beginning with the Tesla case that I think most people are familiar with about the self driving cars. That case was dismissed in its entirety, and I tend to think of that as

94

00:14:54.970 --> 00:15:23.769

Christina Costley: the 1st true AI case that kicked off this wave of securities, class actions subsequent to that, though companies have not fared as well when they've had motions to dismiss considered by courts, and there really have only been a few that the overall trend in the cases is to grant the motion, to dismiss in part and deny it in part. But there have been at least one case where the motion to dismiss was fully denied.

95

00:15:24.219 --> 00:15:39.939

Christina Costley: What we're seeing in these early cases is that healthcare companies you guys have really got to watch out because the courts don't like the idea of patient care decisions being sent to AI, and.

96

00:15:40.440 --> 00:15:47.240

Christina Costley: in my view, the worst decision we've seen in the securities. Class action. AI context

97

00:15:47.350 --> 00:15:50.629

Christina Costley: is another healthcare case. It's the clover health case

98

00:15:51.040 --> 00:16:12.780

Christina Costley: where the court denied the motion to dismiss and held that the company had not disclosed that it was paying physicians to use an AI product that the court held, at least at the pleading stage, did not work the language in the decision is searing, and

99

00:16:13.080 --> 00:16:38.600

Christina Costley: concerning for other companies that operate in this sphere. On the other hand, the case does have some hallmarks that would have suggested it would have been problematic. Anyway, it was a spac case. Courts don't like spacs. I think they tend to view spac defendants with more caution and any allegation. And you know, I think we've really seen this in the context of derivative cases

100

00:16:38.600 --> 00:16:44.099

Christina Costley: recently in Delaware, where we're seeing derivative cases. Historically, that would have been

101

00:16:44.840 --> 00:17:04.360

Christina Costley: denied where the motion to dismiss would have been granted. The court typically would throw those cases out. Courts have become increasingly reluctant to do so when it's an issue that involves health or fatalities or decision making around healthcare decisions that has been

102

00:17:04.690 --> 00:17:24.319

Christina Costley: potentially there have been monetary factors that have weighed into those decisions. And I think we're really seeing that come through in the AI segment, where the court was so hostile to clover health. And it's AI product that frankly doesn't seem. I mean that much worse than any of the other AI products where there haven't been issues.

103

00:17:24.628 --> 00:17:37.329

Christina Costley: And I say that as an early Tesla adopter, I mean my car driving AI was not great for a while. And I think that's part of the process with AI. But the court really took it seriously in this clover health case.

104

00:17:37.897 --> 00:17:42.370

Christina Costley: On the other hand, we have also seen cases

105

00:17:42.810 --> 00:17:48.129

Christina Costley: where courts have been viewed. The AI claims with

106

00:17:48.130 --> 00:18:16.600

Christina Costley: a lot of skepticism, as we saw in the Tesla case. The most common path, though moving forward, seems to be courts, are giving the defendants a win by dismissing a large part of the case, but still keep again a few claims. So, for example, we saw in the Giga Cloud Technology case which is very recent. 2025 out of the Southern district of New York, a great court. The court still denied the motion to dismiss, in part

107

00:18:16.720 --> 00:18:36.319

Christina Costley: as to statements in which the company claimed that it possessed AI. That generates seller ratings and credit profile through volume data. The court found allegations that it did not actually have this capability to be sufficiently credible. We've also seen, for example, in the Open door case, that was an Spo case.

108

00:18:36.320 --> 00:19:05.019

Christina Costley: a secondary public offering those cases. I should say a lot of you probably know this, but it is harder to get a section 11 case dismissed than A. 10 B case, because the plaintiffs in a section 11 case don't have to plead scienter. So in you just lose that defense, and it's a valuable defense in the open door case, which is a 2024 case. The court found on reconsideration, actually, after initially granting the motion to dismiss

109

00:19:05.020 --> 00:19:33.930

Christina Costley: the court, found that the plaintiffs had a claim under Section 11 with respect to statements by the defendant that the algorithm could dynamically adjust to leading market indicators and react real time to economic conditions, and the court found that the allegations were sufficiently plausible in the complaint that the algorithm actually did not have that capability. So these are examples of cases where the company said that the product had a capability. It didn't.

110

00:19:34.360 --> 00:19:47.290

Christina Costley: You know. Similarly, in the upstart holding case, which is a 2023 case. The court denied the motion to dismiss as to statements that the AI underwriting model

111

00:19:47.620 --> 00:20:01.630

Christina Costley: was better than a traditional Fico based credit model and that the model had the ability to quickly adjust for changing economic conditions. And that the

112

00:20:02.160 --> 00:20:27.010

Christina Costley: loans that were processed by the AI were done efficiently, and that this would drive growth for the company. Again, the court bought into allegations that the AI didn't work, and I think you know the lesson from these cases is AI is buggy, especially at this age. I think we all know that right. Anyone who's used Chat Gpt knows AI is not perfect yet. So companies have to be very careful.

113

00:20:27.524 --> 00:20:36.270

Christina Costley: About including risk factors and disclaiming that AI, like all technology, has bugs and the bugs, can

114

00:20:36.280 --> 00:20:42.139

Christina Costley: impacts the ability of the software in material ways. I think

115

00:20:42.290 --> 00:20:49.299

Christina Costley: the key takeaway from these is, you really have to be careful not to oversell what the AI can do.

116

00:20:49.740 --> 00:21:19.040

Christina Costley: You know there are a number of complaints that have been filed in the last 6 months to a year that also have not reached the motion to dismiss stage. I would say. We sort of put these in 2 categories. One is AI washing where you say you have AI capability that you really don't, and I would put the cases that I just talked about the cases where the motion to dismiss was denied in part in that category. There's also a second category of cases where

117

00:21:19.150 --> 00:21:20.040

Christina Costley: course.

118

00:21:20.420 --> 00:21:47.709

Christina Costley: where plaintiffs are alleging that the AI worked perfectly fine, but maybe even it worked too well, and it cannibalized sales from the rest of the company or from your traditional product line. So in that sense, you know, you sort of damned if you do. Damned if you don't, because if it works too well, you're going to get sued for that, too. I can talk a little bit more about cases where the AI is alleged not to have worked the key

119

00:21:47.830 --> 00:22:10.500

Christina Costley: statements that are being litigated. There are really the same type of key statements that plaintiffs fixate on in every case where there's nothing more substantive to say so. In one case, plaintiff, said the company statements that they were well positioned to capitalize on AI trends and anticipated growth were misleading in another. The company said

120

00:22:10.500 --> 00:22:40.389

Christina Costley: things like the key enabler in our growth will be certain AI technologies that we have developed and validated. These are going to drive our turnaround, even that the AI had driven growth in the past few years, and the plaintiffs allege all those statements are false. If the AI isn't good enough. I don't think those claims are going to do very well, but we'll see what the court has to say on it. I think we're really looking more at a world where specific claims

121

00:22:40.410 --> 00:22:48.637

Christina Costley: about how well the AI works that are demonstrably false are going to be actionable, but we'll see what the courts have to say.

122

00:22:49.240 --> 00:22:52.930

Christina Costley: we've also seen these disclosure claims. Where

123

00:22:53.320 --> 00:23:16.959

Christina Costley: the AI is fine there's no allegation. The AI doesn't work. But the allegation is that the company made statements like we're well positioned to win in this emerging market. We've seen growth, that traditional and AI lines are complementary. And then, when the company report sales, the alien has done great. But the traditional lines have not done well, and so that turns into an allegation. You've cannibalized

124

00:23:17.010 --> 00:23:29.900

Christina Costley: your traditional lines of business. Similarly, in another case, we've seen allegations that the company said it would continue to innovate in its core product line. But then

125

00:23:29.960 --> 00:23:48.639

Christina Costley: its core product line didn't do as well. And so they got sued for making that positive statement about the core product line. And in the humana case. That Paul discussed earlier, you know, amongst other issues there was an allegation that the company misled

126

00:23:48.730 --> 00:24:06.799

Christina Costley: investors about patient utilization trends. And then those patient utilization trends weren't correct. So in human, it wasn't that the company had oversold the AI, although there was an allegation, it didn't work but that it had oversold demand for the AI

127

00:24:07.610 --> 00:24:19.389

Christina Costley: So this is a really interesting and emerging area. And we are very eager to see what the court is going to do in this most recent line of cases, as

128

00:24:19.500 --> 00:24:28.780

Christina Costley: they're decided. And we see new growth in this area. With that I'm gonna turn it over to Mike to discuss how the Sec. Is viewing this new area

129

00:24:28.780 --> 00:24:34.790

Michael Diver: Sure. Thank you, Christina, and hearing some of those makes me think about, aren't those, you know, just forward looking

130

00:24:34.980 --> 00:24:44.099

Michael Diver: statements, puffery statements that should be ripe for dismissal, and hopefully they will be. But I'm gonna I'm gonna focus on what the sec is doing right now.

131

00:24:44.390 --> 00:25:04.410

Michael Diver: There's obviously a lot of change of foot with the sec and other regulatory agencies. But if things proceed as expected, I think Paul Atkins will become the chair, I think he's made a number of statements about how he's gonna approach this issue and work has already started within the agency under the acting

132

00:25:04.730 --> 00:25:32.890

Michael Diver: chair. Mr. Waita. Most notably is the establishment of their cyber and emerging technologies. Enforcement unit about a month ago, as the name implies, this is a unit within the enforcement division of the sec. That is going to be focused exclusively on investigating and prosecuting cases involving cyber, AI and other machine learning technology

133

00:25:33.698 --> 00:25:55.220

Michael Diver: as with everything else. Under the current regime. The focus is on retail fraud, I think, for this audience that means issuers, and and shareholders of public companies as well as retail customers of broker dealers and clients of investment advisors. But

134

00:25:55.420 --> 00:26:23.220

Michael Diver: suffice to say, I think issuer shareholders certainly would be a focus of the sec in terms of them trying to protect the interests of of shareholders. So I think this will absolutely have a public company component to it like with everything. AI, I think it's in its. As Christina said, it's in its infancy, but certain cases have already been brought. The focus today has been on AI washing cases.

135

00:26:23.868 --> 00:26:47.189

Michael Diver: That being cases where firms or companies have made false or misleading statements about AI, whether they're using it. In fact, making statements that they're using it, and they're not or misrepresenting its efficacy, or the manner in which it's it's being used or applied, or frankly, the ownership

136

00:26:47.290 --> 00:26:59.450

Michael Diver: of the technology. So the 1st 2 cases that were brought by the Commission were were last summer, and they were brought by 2 or brought against 2 investment advisors

137

00:26:59.560 --> 00:27:08.890

Michael Diver: for making false statements about their purported use of AI to inform or drive investment decisions.

138

00:27:09.040 --> 00:27:36.830

Michael Diver: I can confidently say there are a couple of reasons why these cases are really not relevant to this group other than to just emphasize the point that the Sec is looking at AI, one is, these were investment

advisors. And I think this is this is a public company focused audience 2 is this was an outright fraud. Former Director of Enforcement Grayual referred to this as old school fraud, and I think

139

00:27:37.130 --> 00:27:55.100

Michael Diver: I think that will continue to be the case. I think the Sec. Will continue to look for black and white. You said A. The answer was, you know the truth was Z type disclosure cases with an AI or some emerging or machine learning technology hook

140

00:27:55.300 --> 00:28:01.464

Michael Diver: the second case. That I wanted to talk about those. I think more chain to

141

00:28:01.950 --> 00:28:08.069

Michael Diver: to this audience. And that's the presto automation case that was brought in January of this year.

142

00:28:09.118 --> 00:28:21.790

Michael Diver: Presto! Had made certain representations in their public filings about how their AI assisted Re speech recognition technology could be used to fully automate

143

00:28:21.890 --> 00:28:30.975

Michael Diver: order taking at restaurants and the issue. There were 2 issues with that the 1st one, I think, is probably the more interesting issue for this audience.

144

00:28:31.550 --> 00:28:51.559

Michael Diver: The 1st issue was that, in fact, presto didn't own the technology completely. They did not own it outright. There was a 3rd party that had certain IP rights with respect to the technology, and that was not properly disclosed in Presto's public filings, and the second issue was a more traditional.

145

00:28:51.680 --> 00:29:04.710

Michael Diver: you know, anti fraud violation where the Sec, through their investigation, had determined that, in fact, Presto knew that there would need to be some human involvement in order, taking

146

00:29:05.090 --> 00:29:14.769

Michael Diver: at a time when they were saying that their product was so far developed and so effective that human or you know, human involvement in order taking wasn't necessary.

147

00:29:15.010 --> 00:29:28.979

Michael Diver: So again, fairly straightforward. Anti fraud theory on that. And I still think, you know, disclosures are, gonna be a critical aspect of this. And when I when I say disclosures, I think

148

00:29:29.190 --> 00:29:37.460

Michael Diver: what the Commission is really gonna focus on is, are these disclosures relating to AI, really core to your business.

149

00:29:37.690 --> 00:30:04.720

Michael Diver: are you? Are you touting AI as being a a critical component of your strategy going forward? What are you saying in your Mdn. Item 303, disclosure concerning how you believe AI is gonna impact? Bring efficiency to your business on a going forward. Result in cost reductions improve margins your bottom line, etc. I think.

150

00:30:05.460 --> 00:30:09.409

Michael Diver: we've seen one case in the civil context that focuses on that.

151

00:30:09.640 --> 00:30:30.159

Michael Diver: And then, of course, you know your risk factors and your safe harbor disclosures on the Risk Factor side. I think they will be looking to see whether these were, you know, sort of cookie cutter generic AI related disclosures, or did you really, you know, take time and be thoughtful, and think about what particular risks

152

00:30:30.380 --> 00:30:36.220

Michael Diver: are associated with your business in so far as you are using AI

153

00:30:37.180 --> 00:30:49.379

Michael Diver: so disclosures writ large, obviously, will be a focus of the agency. The second area that I really think the sec will focus on is disclosure controls and

154

00:30:49.490 --> 00:30:55.500

Michael Diver: cyber security and internal controls. And I think the probably the best way to understand

155

00:30:55.630 --> 00:31:11.569

Michael Diver: how I expect the Sec. Will approach. This is looking at the Solarwinds cases. Some some of you, I'm certain, were involved in the sweep. I think there were several 100 issuers who received inquiry letters given the breadth of the Solarwinds

156

00:31:11.620 --> 00:31:28.340

Michael Diver: it infrastructure technology that was being used by public companies. So some of you may know exactly what I'm talking about. It was a broad, based sweep that led to 4 Enforcement actions against public companies that had used the technology.

157

00:31:29.425 --> 00:31:42.809

Michael Diver: Solarwinds itself was charged with with making false statements about their technology. Interestingly, a substantial portion of the Solarwinds case was dismissed. The sec.

158

00:31:43.361 --> 00:31:53.799

Michael Diver: That case was not settled. Solarwinds fought it, and a meaningful portion of that case was dismissed, but the the downstream users who settled the case.

159

00:31:54.320 --> 00:31:59.009

Michael Diver: Were criticized by the sec. On, I would say, a couple of

160

00:31:59.320 --> 00:32:23.569

Michael Diver: broad based theories. One is, as I just said, your risk disclosures were sort of hypothetical or generic or inadequate, so the same thing would be true with respect to your use of AI your disclosure controls were inadequate, because in the Solarwinds case you had incident response teams who were in obviously

161

00:32:24.458 --> 00:32:43.880

Michael Diver: in the weeds on the scope and magnitude of the issue. And for whatever reason, full and fair information about the scope of the issue did not find its way from the incident. Response teams to the disclosure decision makers, and as a result of that the Sec. Concluded that

162

00:32:44.000 --> 00:32:49.089

Michael Diver: in some instances companies either made

163

00:32:49.140 --> 00:33:15.369

Michael Diver: false statements about the the breach that was at issue, or more commonly, they underplayed or understated in a material way the impact of the breach on their business and their customer base. I think all of those theories and areas of inquiry are very much on the table with respect to machine learning technology, insofar as issuers are going to be using them.

164

00:33:16.135 --> 00:33:25.490

Michael Diver: I would. I'm heartened a little bit by the dissents in the in the Solarwinds case. The 2 Republican Commissioners did dissent.

165

00:33:25.670 --> 00:33:41.439

Michael Diver: Their criticism was that really this was, you know, sort of Monday morning quarterbacking. This was actually a Russian intelligence agency that had had developed. And it put this malware

166

00:33:41.690 --> 00:33:56.158

Michael Diver: into Solarwinds product line so very sophisticated, and, in fact, it went undetected for years, and it seemed, I think, to these commissioners that the agency was holding these issuers to too high a bar.

167

00:33:56.830 --> 00:34:16.779

Michael Diver: But nevertheless, I think they, as I said, they are instructive as you are thinking through how you're gonna craft your disclosures insofar as as you or your clients are using AI in a meaningful way, going forward. And you have. You have a terrific resource with Gunderson in terms of

168

00:34:16.820 --> 00:34:29.189

Michael Diver: the blocking and tackling as to the disclosure process, you know things that come to my mind is, should you be looking again at your disclosure committee process your certifications.

169

00:34:29.300 --> 00:34:33.169

Michael Diver: things of that nature insofar as you're using AI

170

00:34:33.832 --> 00:34:38.419

Michael Diver: I think it would be time and money well spent to have

171

00:34:38.867 --> 00:35:05.589

Michael Diver: securities, compliance council like Gundersen. At least take a look at that and make sure that it's sufficiently thorough and broad and precise enough if that makes sense to pick up on the risks posed to your business by the use of AI. So I think, even though everyone has an expectation in the current environment that the Sec

172

00:35:05.600 --> 00:35:18.800

Michael Diver: is going to go away. I think that Bruce mentioned that at the beginning of the call it's going to be a much smaller agency. There's no question than it was, and it will be a much less aggressive agency than it was under Chair Gensler.

173

00:35:19.050 --> 00:35:35.751

Michael Diver: But I think for those of you who, like me are old enough to have lived through a couple of political cycles. I think we're still gonna see an agency that will be out there investigating sort of its core mission type cases,

174

00:35:36.190 --> 00:36:05.080

Michael Diver: and and obviously, if there are circumstances where there's actual shareholder harm the the risk of the risk of enforcement an enforcement investigation. And a case is is fairly high. There's 1 other thing I don't know if we covered it, but we we recently sat down with with folks from a major dno carrier, and it's very clear that they're looking at this issue very hard, and you may want to.

175

00:36:05.625 --> 00:36:23.480

Michael Diver: Spend some time talking to your broker about whether any AI relate related securities. Claims are covered. If so, how are they covered? Just to make sure that you don't have an unfortunate surprise. Should a claim arise relating to AI

176

00:36:24.410 --> 00:36:24.820

Alexa Belonick: Great

177

00:36:24.820 --> 00:36:26.630

Michael Diver: So that's and I have

178

00:36:26.810 --> 00:36:42.819

Alexa Belonick: Yeah. And I want to jump in on one other thing. A little based on, you know. As you can imagine, we had a little sidebar prepping for this this session. That was very interesting. And we were talking about this disclosure controls and procedures point and just to clarify. You know, there's potentially

179

00:36:42.820 --> 00:37:00.989

Alexa Belonick: 2 avenues of disclosure controls and procedure overlap with AI. You know, one of them. And I'm a person who like drives on 101 and sees all the billboards about new and introduced tech that people are getting advertised. And I saw something that said, You know, integrate AI into socks.

180

00:37:01.070 --> 00:37:25.830

Alexa Belonick: So there's going to be an evolving area where AI tools are actually seeding your disclosure right? Like that's kind of one element of disclosure controls and procedures. Are you integrating an AI tool into your compliance program, into your disclosure controls into your disclosure drafting. But that's actually not even necessarily what we're talking about here. This is

181

00:37:25.830 --> 00:37:35.190

Alexa Belonick: before you get to that, because I don't know there's been widespread adoption, though we we definitely have clients that look at using Claude and Chat Gpt to help with drafting.

182

00:37:35.330 --> 00:37:37.430

Alexa Belonick: This is more about

183

00:37:37.540 --> 00:38:00.159

Alexa Belonick: almost a more traditional claim of disclosure controls and procedures, getting good information about what's going on operationally. What are the current risks? You know what are incidents, cyber incidents that have happened, or other failures of AI and getting that operational information to the team that actually then drafts the disclosures and gets those out publicly.

184

00:38:00.160 --> 00:38:27.720

Alexa Belonick: As we all talk about AI is evolving. And so this is a place where your disclosures may also need refreshing. Frequently the risk factor disclosure, or the Mdn trend disclosure that was accurate a quarter ago, really isn't accurate anymore. Or as you continue to use the tools, you discover, they have certain limitations. And that's really going to change how you describe what they're doing for your business.

185

00:38:27.998 --> 00:38:40.550

Alexa Belonick: Yeah, I just wanted to flag. There's kind of 2 elements of AI, but and how they relate to disclosure control. And and you don't have to be using an AI tool for it to matter to your disclose in the controls environment.

186

00:38:40.630 --> 00:38:46.439

Alexa Belonick: For this to matter. This also just is any use of AI in the business affects what you need to disclose

187

00:38:46.710 --> 00:38:47.350

Michael Diver: Right.

188

00:38:53.090 --> 00:38:55.309

Michael Diver: So I think, Gidan, are we? Are we at

189

00:38:58.036 --> 00:39:00.380

Gidon Caine: This is yours, Mike

190

00:39:00.560 --> 00:39:09.800

Michael Diver: Oh, I'm sorry. Yeah, so I think we've covered a number of these points already. But it's obviously the the technology is.

191

00:39:10.370 --> 00:39:15.847

Michael Diver: is going to be pervasive, pervasive. It's it will be ubiquitous if it if it isn't already.

192

00:39:18.000 --> 00:39:20.965

Michael Diver: There are a host of defense

193

00:39:21.740 --> 00:39:27.070

Michael Diver: defenses that are being developed right now, as as I think Christina covered earlier.

194

00:39:27.686 --> 00:39:39.060

Michael Diver: And I think it will. I think there will be a a body of law developed on this area, most likely focusing on, you know, core principles of

195

00:39:39.190 --> 00:40:05.640

Michael Diver: the law around motions to dismiss, you know, have the plaintiffs sufficiently alleged falsity. Looking at the total of mix of information that a company puts out there. You know how precise were the company's risk factors, etc. And then, I think, a really interesting part of on the civil side. The a really interesting part of these cases is going to be sie enter you know, are are, how are plaintiffs going to

196

00:40:06.161 --> 00:40:12.928

Michael Diver: a ledge? The enter, I certainly, you know, can see cases arising with respect to

197

00:40:13.660 --> 00:40:21.138

Michael Diver: you know, whistleblowers on the Sec side. But I I think it's gonna be. It's gonna be interesting because there will be certainly defenses

198

00:40:21.630 --> 00:40:40.490

Michael Diver: arguing that look, this is a a, an emerging technology. We we could not predict this negative outcome. And in fact, we told people that we couldn't predict it. So I think you're gonna see sienter and falsity. Sort of arguments and aligned, and and I can see them.

199

00:40:41.264 --> 00:40:45.879

Michael Diver: You know I can see them gaining traction on the sec. Side.

200

00:40:46.259 --> 00:40:56.450

Michael Diver: I certainly again, this is gonna be a, I think, a kinder, gentler sec. Which maybe is not saying much relative to the timeframe that we just came out of. But I do see

201

00:40:56.520 --> 00:41:09.289

Michael Diver: the agency being active, and I think in a helpful way, not on the Enforcement side, you know. We're seeing that the sec. Corp fin has been issuing comment letters that have asked

202

00:41:09.300 --> 00:41:14.749

Michael Diver: issuers to evaluate certain aspects of their disclosures.

203

00:41:15.321 --> 00:41:39.469

Michael Diver: Pertaining to AI. And I certainly we have seen some staff commentary around AI disclosures, and I would fully expect, as this area evolves, further, that we're gonna see either informal staff commentary about disclosures or staff disclosure, interpretations being published.

204

00:41:39.895 --> 00:41:54.729

Michael Diver: Which to me is always helpful. Rather than learning the staff's view during the course of an enforcement investigation. It's great when they actually don't put the cart before the horse and actually give you their perspective so that you can comply

205

00:41:54.870 --> 00:42:06.590

Michael Diver: on a going forward basis. And I I do expect I do expect that's gonna happen. And I think we've covered sort of what enforcement is going to be focused on going forward

206

00:42:13.430 --> 00:42:21.520

Gidon Caine: So thanks, Mike. Let's talk about now. Sort of the action items going forward.

207

00:42:21.680 --> 00:42:30.209

Gidon Caine: We've talked a lot about sort of the threats and the opportunities that are presented by AI and by disclosures on AI.

208

00:42:30.360 --> 00:42:40.280

Gidon Caine: I think that the thing that we also need to focus on is sort of in the boardroom. What is it exactly that we should be thinking about and concentrating on going forward?

209

00:42:40.550 --> 00:42:45.759

Gidon Caine: I think that the the 1st thing is that to remember the basic rules that

210

00:42:45.920 --> 00:42:51.629

Gidon Caine: the role of directors and management are different in terms of disclosure policy.

211

00:42:51.740 --> 00:42:58.549

Gidon Caine: and that what happens is that directors set policy and management implements it

212

00:42:58.790 --> 00:43:25.099

Gidon Caine: and the management can explain and can provide insight so that the directors can set competent policy. But those are the 2 roles that are played in that, and that becomes important, because, while there may be people on the board who are very familiar with the issues involving AI, either because of the other investments that they have, or because of their backgrounds.

213

00:43:25.240 --> 00:43:45.859

Gidon Caine: You want to maintain that kind of separation, so that what happens is that when there is a when there is litigation that the Board can say. Look! We were setting the policy based on information that we got, and that we were relying in good faith on what was being told to us by management.

214

00:43:46.060 --> 00:44:12.329

Gidon Caine: And then, in addition to that, that what management was saying right was that they were really trying to come up with is again in a rapidly evolving environment that they were trying to provide the best information they could about not only generative AI, but machine learning and the other forms of AI which are really proliferating and which are having a potentially major impact on the business.

215

00:44:13.112 --> 00:44:24.369

Gidon Caine: I think that the other thing that you want to think about is that if you're a board member, you want to be sure that you're establishing it controls that assess and mitigate AI related risk.

216

00:44:24.780 --> 00:44:35.700

Gidon Caine: So that's not something. You right? It's something you do in conjunction with management and potentially in conjunction with outside consultants. But what you're trying to do is you're trying to figure out

217

00:44:35.970 --> 00:44:36.975

Gidon Caine: what

218

00:44:39.160 --> 00:44:51.469

Gidon Caine: you're trying to figure out. What is it that this company needs in terms of its it controls. I think this is one of the things where Gundersen is particularly important, because what it can do is it can give you what's market

219

00:44:51.580 --> 00:44:53.890

Gidon Caine: because it sees so many of these companies.

220

00:44:54.140 --> 00:45:05.680

Gidon Caine: and that, I think, is going to be something that's helpful in terms of sort of establishing how, establishing the the controls and assessing how they're actually working.

221

00:45:05.930 --> 00:45:17.919

Gidon Caine: Then the final thing, or the next thing I think I would do is again. I want to emphasize. You need to look at the D and O. Insurance policy. You need to talk to the broker, and you need to figure out how AI related claims would be handled.

222

00:45:18.090 --> 00:45:31.430

Gidon Caine: It's not necessarily that we think that they wouldn't necessarily be handled the same way that other disclosure claims are. But it's worth having that discussion and making sure that, in fact, that's, in fact, exactly what's going to happen

223

00:45:31.670 --> 00:45:36.080

Gidon Caine: then I think the other thing that you have to think about is revisiting public disclosures

224

00:45:36.210 --> 00:45:50.770

Gidon Caine: concerning the use of AI, including the potential impact on operating performance as disclosed in the Mdna risk factors and elsewhere. The reason this is important is because what will happen is that you may say, well, they're in my risk factors, and that's enough.

225

00:45:50.980 --> 00:46:07.979

Gidon Caine: And the answer is, that's probably not. Probably not true, AI is probably going to surface in other places in the disclosures you have, and then you're going to need to revisit that every quarter, just to make sure that things haven't gotten so

226

00:46:08.120 --> 00:46:15.469

Gidon Caine: so so far ahead of the disclosures that the disclosure is no longer is no longer relevant.

227

00:46:15.700 --> 00:46:28.910

Gidon Caine: And this is something that's happening very quickly. And so we're looking at people who, right? We're filing something this quarter, that next quarter may not, in fact, continue to be accurate or relevant.

228

00:46:29.670 --> 00:46:35.060

Gidon Caine: I think that the other thing that we're thinking about is

229

00:46:35.810 --> 00:46:38.130

Gidon Caine: that we want the policy to be

230

00:46:38.270 --> 00:46:45.240

Gidon Caine: tailored to the individual company, but transparent and flexible and comprehensible, and that there's follow up.

231

00:46:45.450 --> 00:46:54.839

Gidon Caine: And it's important that that actually be noted either in the minutes or that it's noted somewhere so that people can remember. Oh, yeah, we actually, we actually talked about this stuff.

232

00:46:55.480 --> 00:47:01.949

Gidon Caine: And you know, management can have set help set those sort of clearly defined and realistic benchmarks.

233

00:47:02.425 --> 00:47:13.164

Gidon Caine: As reporting, you know, as they're reporting to the board. So I think that that's the way in which the 2 groups really interact with each other. And that's all I have.

234

00:47:13.640 --> 00:47:16.700

Gidon Caine: on this Alexa

235

00:47:16.700 --> 00:47:17.190

Alexa Belonick: Yeah.

236

00:47:17.210 --> 00:47:18.450

Gidon Caine: Be back to you

237

00:47:18.450 --> 00:47:38.279

Alexa Belonick: Yeah, no. And I did, you know just some, some concluding thoughts, particularly on this slide. And and I really mean this as a note of empathy to all of our clients who are looking at this and saying, you know the reason that you're in this environment. The reason that you're facing potential litigation risk while you're saying on AI is because

238

00:47:38.280 --> 00:47:50.430

Alexa Belonick: there is such pressure from investors in the public markets or for our clients who are going through the Ipo process. You know, from what the feedback you're receiving from your investment banking team.

239

00:47:50.620 --> 00:48:04.560

Alexa Belonick: People really want to hear the investing public. The you know, marquee investors who you are courting. They want to hear that you are seizing the opportunities in this area that you are

240

00:48:04.560 --> 00:48:25.820

Alexa Belonick: offensively deploying AI, that you're defensively aware of what your competitors are doing and keeping pace with them. Your management team absolutely wants to talk about this, and they want to talk about it in a positive way, and about how your company is well positioned to capitalize on the moment.

241

00:48:25.900 --> 00:48:33.290

Alexa Belonick: and you know the the daunting question becomes, how do you balance that?

242

00:48:33.490 --> 00:49:01.420

Alexa Belonick: So that you know, in the event that we're all calling up and saying, You know the shoe has dropped, and we need a defense to these claims that are being brought against us, that you have good disclosures to look at, good policies, great corporate procedure, you know an informed board, an active management team, you know. How do you balance those things? And I'll say that, you know, having been in the trenches with you all

243

00:49:01.610 --> 00:49:18.179

Alexa Belonick: drafting disclosure and figuring out. You know what the management team can and wants to say on earnings calls. For example, there is a balance that can be struck here, and the work that you do to keep yourselves informed about

244

00:49:18.180 --> 00:49:33.909

Alexa Belonick: evolving. AI. I know that you probably feel like you get tons of emails and webinars and information from the Gundersen tech transactions team and privacy team on all of those things. You know, employment labor team on how to integrate AI into those work streams

245

00:49:34.080 --> 00:50:01.069

Alexa Belonick: that work can protect you. And as long as you're sort of doing the work and and keeping an eye to the disclosures and helping sort of inform the management team on how to keep those discussions with investors and the public balanced. You can be in a good position where cat and really can help put together a strong defense. So I would say, that's kind of some concluding remarks.

246

00:50:01.200 --> 00:50:12.200

Alexa Belonick: It looks like I don't see Q. And as in the chat, so I'll open it up. If the cat and team had any other remarks that they wanted to to give, or I'm happy to give folks a little time back on a Thursday

247

00:50:13.850 --> 00:50:14.959

Paul Yong: So I guess

248

00:50:14.960 --> 00:50:16.169

Michael Diver: Bruce, you're on mute

249

00:50:16.170 --> 00:50:17.419

Paul Yong: Oh, for Heppers!

250

00:50:17.920 --> 00:50:26.700

Bruce Vanyo: So undoubtedly the plaintiff Securities bar, which is very aggressive and which has actually grown in size.

251

00:50:27.050 --> 00:50:33.339

Bruce Vanyo: We'll try to make a lot out of AI disclosures and alleged failures.

252

00:50:34.100 --> 00:50:40.850

Bruce Vanyo: There's nothing you can do about that other than be very careful about what you say. Don't overstate.

253

00:50:41.100 --> 00:50:50.149

Bruce Vanyo: you know. Don't what they call AI wash, claiming you have AI capabilities that you don't have. Be very careful

254

00:50:50.810 --> 00:51:01.089

Bruce Vanyo: to limit what you say about that, and be careful to add a lot of risk disclosures regarding AI. And those are being invented. Now as we speak, and

255

00:51:01.250 --> 00:51:11.219

Bruce Vanyo: I'm I'm sure that Alexis Group is working on them. I know we are working on them as well, and those will offer a lot of protection. I think initially, courts

256

00:51:11.430 --> 00:51:16.629

Bruce Vanyo: may not be sure what to do with these AI cases because they will be new.

257

00:51:16.990 --> 00:51:29.910

Bruce Vanyo: But eventually courts will find out that most of them are like most securities cases Bs, and really don't amount to any kind of fraud. But in the meantime you don't want to be one of those that

258

00:51:30.070 --> 00:51:36.170

Bruce Vanyo: fails to win a motion to dismiss, because the courts don't quite understand this yet.

259

00:51:36.720 --> 00:51:53.209

Bruce Vanyo: It's a ever moving hot topic. And so it's going to require a lot of diligence by the company to keep track of to what extent your company is involved in using AI, or if you're an AI company, what you say about your

260

00:51:53.550 --> 00:51:58.089

Bruce Vanyo: your performance capabilities, your prospects, and all of that

261

00:51:58.730 --> 00:52:05.919

Bruce Vanyo: you don't need to hike. You can understate, and you'll still get the benefit of the stock market

262

00:52:06.270 --> 00:52:12.539

Bruce Vanyo: if it ever recovers from the tariff situation loving your company.

263

00:52:12.870 --> 00:52:15.470

Bruce Vanyo: So just be very cautious about this

264

00:52:16.040 --> 00:52:26.520

Christina Costley: And and just to echo what Bruce said, you know, one of the things we are really seeing in these cases is that the claims are not based so much on the company's

265

00:52:26.670 --> 00:52:44.190

Christina Costley: disclosures in their 10 Ks. Or they're offering documents which are typically vetted and reviewed by council. We are seeing a lot of focus on what's at the earnings calls, which is obviously typically management making the statements. So I think the takeaway is.

266

00:52:44.480 --> 00:52:53.240

Christina Costley: don't just be cautious and undersell in your Sec. Filings, but also the instruction to management has to be.

267

00:52:53.470 --> 00:52:58.740

Christina Costley: Please downplay this and be cautious in what you say during those calls

268

00:53:04.140 --> 00:53:07.299

Bruce Vanyo: So, Mike or Paul, you have anything to say

269

00:53:07.300 --> 00:53:23.129

Michael Diver: I to me, I would say. One of the really interesting questions is what Gidan spoke about, and that's as a director. How do you satisfy your duty of care? Given that lay people are really struggling and understanding how this product, how this technology really works.

270

00:53:23.290 --> 00:53:47.010

Michael Diver: And I know that there are firms out there marketing themselves. As being able to provide risk assessments. Do. It controls and the like. And I presume all public companies that are using AI part of their stocks. Annual assessment will involve their. Their assessment of internal controls will extend

271

00:53:47.250 --> 00:54:03.929

Michael Diver: to the use of AI. But it may be, if if you're a director, or you're counseling a board or a committee of the board of a company that really is using AI in a very material way. I think you're gonna wanna

272

00:54:04.380 --> 00:54:10.400

Michael Diver: make sure that you've developed a record that the Board was fully advised as to how it's being used.

273

00:54:10.924 --> 00:54:31.289

Michael Diver: I don't think you have to get into the absolute minutia as to what it is from a technological standpoint, but you absolutely want to create a record that the Board has satisfied its duty of care with respect to the manner in which management is employing AI to advance the business

274

00:54:36.640 --> 00:54:41.870

Bruce Vanyo: So I think that's probably it. We'll give everyone back 4 min of their time