

# Katten

## ***Speaking of AI: What Can You Do to Avoid Trouble in Disclosures, Litigation, and Regulatory Scrutiny***

April 3, 2025

---

BRUCE VANYO & ALEXA BELONICK  
MODERATORS

**Michael Diver**, Partner, Chicago

**Christina Costley**, Partner, Los Angeles

**Gidon Caine**, Partner, Los Angeles

**Paul Yong**, Partner, Los Angeles

# Why Is AI Important?

- Use of artificial intelligence (“AI”) has grown exponentially.
  - Use approximately doubling in ten months.
  - AI related risk factors increased by 280 percent among the S&P 500 in the year ending April 30, 2024.
- The AI boom has led to a new wave of AI related litigation.
- Potential risks companies using AI may face in civil litigation
  - Lessons learned thus far
  - Action items for the future

# Contractual and Equitable Claims

- Plaintiffs are bringing contractual and equitable claims against health insurers for using allegedly faulty predictive AI models.
- Cases look like the beginning of a trend towards more closely scrutinizing AI.

# Securities Litigation

- Plaintiffs have started to bring securities and fiduciary duty claims based on the allegedly faulty deployment of AI
- We expect that trend to accelerate.
- D&O insurance underwriters are focused on assessing this risk.
- Even companies that are not actively seeking to develop or deploy AI may face risk for allegedly false disclosures about their association with major players in the AI industry.
- Some complaints criticize the completeness of narrative disclosures that might otherwise be overlooked.

# SEC Enforcement Focus

- In late February 2025, the SEC established a Cyber and Emerging Technologies Enforcement Unit
  - Focus on retail fraud concerning use of AI and machine learning
- Enforcement has already brought several “AI washing” cases, with more in process
  - SEC keenly focused on potentially false or misleading statements concerning use of AI by issuers and other market participants
- Following on SolarWinds cases, we expect the SEC to focus on disclosure controls with respect to AI
  - But Commissioner dissents may presage more lax approach to cybersecurity under new regime
  - Future AI enforcement cases will be premised on fundamental securities laws principles

# Takeaways & Lessons Learned So Far

- AI issues impact a wide range of companies, not just AI developers.
- Defendants argue that the cases should be dismissed because plaintiffs do not adequately allege falsity or scienter.
- Defendants tend to argue that AI is complex and quickly evolving, making it difficult to accurately predict its impact.
- Cases involving allegations concerning AI have been dismissed at a lower rate than non-AI cases.
- SEC likely to get more active in regulating AI disclosures.
  - SEC comment letters, compliance and disclosure interpretations

# Action Items Going Forward

- Consider the role directors and management play when setting AI disclosure policy.
- Establish IT controls to assess and mitigate AI-related risk.
- Review D&O insurance policies to determine how AI-related claims would be handled.
- Revisit public disclosures concerning the use of AI, including the potential impact of AI on operating performance as disclosed in MD&A, risk factors, and elsewhere.

# Katten Locations

## **CHARLOTTE**

615 South College Street  
Suite 1700  
Charlotte, NC 28202-3354  
+1.704.444.2000 tel  
+1.704.444.2050 fax

## **CHICAGO**

525 West Monroe Street  
Chicago, IL 60661-3693  
+1.312.902.5200 tel  
+1.312.902.1061 fax

## **DALLAS**

2121 North Pearl Street  
Suite 1100  
Dallas, TX 75201-2591  
+1.214.765.3600 tel  
+1.214.765.3602 fax

## **LONDON**

Paternoster House  
65 St Paul's Churchyard  
London EC4M 8AB  
United Kingdom  
+44 (0) 20 7776 7620 tel  
+44 (0) 20 7776 7621 fax

## **LOS ANGELES**

2121 Avenue of the Stars  
Suite 1100  
Los Angeles, CA 90067-5010  
+1.310.788.4400 tel  
+1.310.788.4471 fax

## **NEW YORK**

50 Rockefeller Plaza  
New York, NY 10020-1605  
+1.212.940.8800 tel  
+1.212.940.8776 fax

## **ORANGE COUNTY**

300 Spectrum Center Drive  
Suite 1090  
Irvine, CA 92618-4992  
+1.714.966.6819 tel  
+1.714.966.6821 fax

## **SHANGHAI**

Suite 4906 Wheelock Square  
1717 Nanjing Road West  
Shanghai 200040  
P.R. China  
+86.21.6039.3222 tel  
+86.21.6039.3223 fax

## **WASHINGTON, DC**

1919 Pennsylvania Avenue NW  
Suite 800  
Washington, DC 20006-3404  
+1.202.625.3500 tel  
+1.202.298.7570 fax

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at [katten.com/disclaimer](http://katten.com/disclaimer).

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.