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When Machines Discriminate: The Rise of AI Bias Lawsuits

Over the past three years, businesses in the United States have rapidly adopted artificial intelligence ("AI") technology – defined broadly as the ability of machines to perform tasks that typically require human intelligence. In particular, many companies now perform critical business functions using machine learning technology, a subset of AI in which computers use algorithms and statistical models to analyze and draw conclusions from data. Much like with humans, the conclusions drawn by these AI tools are susceptible to bias. Bias in an AI model can arise from the data used to train the model or from the design of the model itself. Data bias occurs when the AI model is trained on a biased data set and then replicates that bias in its conclusions. Algorithmic bias occurs when the AI model is coded to look for certain terms that may be more likely used by certain groups. Either can lead the AI model to produce biased outcomes.

Recently, a growing wave of litigation in the United States has taken aim at AI bias, alleging that AI systems used by companies in fields such as employment, housing, and insurance exhibit biases against individuals based on age, race, and other protected classes. In addition, several states have started to enact legislation that addresses AI bias – see the AI practice area note below. The litigation has forced courts to grapple with the question whether machines can be responsible for discrimination. Thus far, courts have reached the conclusion that companies using AI and vendors supplying AI can be held liable for discriminatory conduct when decisions made by their AI systems disparately impact a protected class of people. As a result of these decisions, litigation over AI bias is likely to grow significantly in the future.

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Quinn Emanuel Represents Ukraine in Overwhelming ECHR Victory Against Russia

The European Court of Human Rights handed down a recent ruling in the inter-state case of "Ukraine and the Netherlands v. Russia." The Court held that the Russian Federation is responsible for multiple flagrant and unprecedented human rights violations in Ukraine since 2014, and in the course of the ongoing full-scale invasion of Ukraine. We are proud to represent Ukraine in this historic case and look forward to the next phase of the proceedings to seek justice on its behalf.

Quinn Emanuel Completes 31st Annual Firm Hike

Quinn Emanuel attorneys from 24 offices around the world gathered in Cusco, Peru for the thirty-first annual firm hike. Beginning at 11,800 feet, the 250-person group trekked to the stunning Humantay Lake (elevation 14,000 feet) where most camped overnight and ascended the Salkantay Pass at 15,255 feet.

Attorneys Recognized by the New York Legal Awards

Quinn Emanuel has been named a finalist for "Litigation Department of the Year" in General Litigation and Intellectual Property practices. Partner Peter Fountain has been recognized as a Rising Stars Honoree, and Associate Stephanie Kelemen is a finalist for Most Promising Newcomer. Congratulations to all!

Disparate Impact Claims

Lawsuits premised on AI bias have been successful in stating claims for discrimination based on disparate impact. Disparate impact claims are a tool often used to fight discrimination under Federal law. These claims help root out discriminatory intent by prohibiting facially neutral policies that disproportionally impact people belonging to a protected class, which allows "plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment." *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 540 (2015).

Disparate impact claims may be brought under a number of federal anti-discrimination statutes, including the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), Age Discrimination in Employment Act ("ADEA"), and the Fair Housing Act ("FHA"). To plead a prima facie case of disparate impact, a plaintiff must (1) show a significant disparate impact on a protected class or group; (2) identify the specific practices or selection criteria at issue; and (3) show a causal relationship between the challenged practices or criteria and the disparate impact. *Bolden-Hardge v. Office of Cal. State Controller*, 63 F.4th 1215, 1227 (9th Cir. 2023). Over the past three years, disparate impact claims have been brought against a number of companies and their AI vendors, alleging that the AI software built by the vendors and deployed by the companies is biased in a manner that disparately impacts a protected class of people.

AI Bias in Hiring: *Mobley v. Workday*

Thus far, AI bias has been most prominently litigated in cases that involve use of AI to make hiring decisions. Academic studies have convincingly demonstrated AI bias in certain hiring applications. For example, a University of Washington study provided three AI models with job applications that were identical in all respects other than the name of the applicant. It found that the AI models preferred resumes with white-associated names in 85% of cases and those with Black-associated names only 9% of the time, and exhibited preferences for male names over female names. Kyra Wilson & Aylin Caliskan, "Gender, Race, and Intersectional Bias in Resume Screening via Language Model Retrieval," U. Wash. Information School (2024).

Litigation bringing claims alleging discrimination by AI hiring models has already been filed in several jurisdictions. Most significantly, in May of this year the United States District Court for the Northern District of California took the precedent-setting step of certifying a collective action in an AI bias case, in *Mobley v. Workday, Inc.*, 2025 WL 1424347 (N.D. Cal. May 16, 2025). Workday provides businesses with a platform to screen job applicants. Workday's platform uses AI to compare the skills required in the employer's job posting with applicants' resumes and applications, and then determines the extent to which the applicant's skills match the role for which he or she applied. Workday's AI used these conclusions to provide recommendations to the employer about which candidates would be the best fit for the available position.

The plaintiffs in *Mobley* are five individuals over the age of forty who applied for hundreds of jobs using Workday's system and were rejected in almost every instance without an interview, allegedly because of age discrimination in Workday's AI recommendation system. After Workday moved to dismiss the claims in 2024, the Court allowed *Mobley*'s disparate impact claim under the ADEA and ADA to proceed, holding that Workday had liability as an agent of the employers who used its AI product. *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796 (N.D. Cal. 2024). The Court reasoned that because Workday's AI software participated in the decision-making about which applicants to hire, its biases could be grounds for a cognizable discrimination claim. The Court explained, "Workday's role in the hiring process is no less significant because it allegedly happens through artificial intelligence rather than a live human being who is sitting in an office going through resumes manually to decide which to reject. Nothing in the language of the federal anti-discrimination statutes or the case law interpreting those statutes distinguishes between delegating functions to an automated agent versus a live human one." *Id.* at 807. The Court also recognized the policy implications that would flow from a contrary holding, warning, "Drawing an artificial distinction between software decisionmakers and human decisionmakers would potentially gut anti-discrimination laws in the modern era." *Id.*

In May 2025, the Court certified the litigation as a collective action. *Mobley v. Workday, Inc.*, 2025 WL 1424347 (N.D. Cal. May 16, 2025). In so holding, the Court again held that Workday's AI was an active participant in the hiring process and that Workday's AI algorithm constitutes a unified policy that is applicable to all members of the collective, even though they applied to different positions with different employers and Workday's AI was thus assessing different parameters when it made decisions about which candidates to recommend. Plaintiffs are now in the process of notifying potential members of the collective, and the case is proceeding to the discovery phase.

Other cases in addition to *Mobley* have also brought claims based on AI bias in hiring. For example, in 2022 the U.S. Equal Employment Opportunity Commission

("EEOC") brought a lawsuit against iTutorGroup, alleging that iTutorGroup's AI hiring tool discriminated against job applicants based on age. iTutorGroup answered the complaint, after which the parties agreed to a settlement under which iTutorGroup remedied its AI hiring process and paid out a settlement fund to rejected job applicants. *EEOC v iTutorGroup, Inc., et al.*, 2023 WL 6998296 (E.D.N.Y. Sept. 8, 2023). This case was the first lawsuit brought as part of a broader AI and Algorithmic Fairness Initiative by the EEOC, which aimed to "guide applicants, employees, employers, and technology vendors in ensuring that these technologies are used fairly, consistent with federal equal employment opportunity laws." (EEOC, "EEOC Launches Initiative on Artificial Intelligence and Algorithmic Fairness," (Oct. 28, 2021), available at https://www.eeoc.gov/newsroom/eeoc-launches-initiative-artificial-intelligence-and-algorithmic-fairness. However, the EEOC's AI and Algorithmic Fairness Initiative was subsequently ended by the Trump Administration, after the President issued an executive order mandating that agencies "deprioritize enforcement of all statutes and regulations to the extend they include disparate-impact liability." Executive Order 14281, 90 F.R. 17537 (Apr. 28, 2025).

In addition, in March of this year the ACLU Colorado announced that it had filed a complaint with the EEOC and the Colorado Civil Rights Division against Intuit, Inc. and its AI vendor HireVue. HireVue's AI tool conducted video interviews of job applicants and automatically provide Intuit with a score and report based on its assessment of the interviewee's performance. The ACLU brought the complaint on behalf of an Indigenous and deaf job applicant, who was rejected following her AI interview and given feedback that she needed to "practice active listening." The ACLU alleges that the AI interview tool was inaccessible to deaf applicants and was also likely to perform worse when evaluating non-white applicants, including those who spoke dialects like Native American English which have different speech patterns, word choices, and accents. (ACLU, Complaint of Discrimination (Redacted) Against Hirevue & Intuit (March 19, 2025), available at https://www.aclu.org/documents/complaint-of-discrimination-redacted-against-hirevue-intuit. The complaint contends that this conduct violated Title VII of the Civil Rights Act, the ADA, and the Colorado Anti-Discrimination Act. In light of the rulings in *Mobley*, other complaints are likely to follow that similarly allege discrimination by AI in hiring.

Cases Alleging Discrimination Due to AI Bias in Other Areas

Litigation concerning AI bias has not been limited to cases involving the use of AI in hiring. Lawsuits that claim AI bias in industries like insurance and housing have also been found to state claims that survive motions to dismiss. For example, in 2022, plaintiffs filed a putative class action in the Northern District of Illinois alleging that AI software used by State Farm to detect fraudulent insurance claims was biased against Black homeowners in violation of the Fair Housing Act ("FHA"). *Huskey, et al. v. State Farm Fire & Casualty Co.*, 2023 WL 5848164 (N.D. Ill. Sept. 11, 2023.) Specifically, Plaintiffs allege that State Farm utilized a machine-learning algorithm to screen for potentially fraudulent claims, and that the algorithm relied on biometric data, behavioral data, and housing data that each functioned as a proxy for race. This allegedly subjected Black policyholders to additional administrative hurdles and delays in processing their claims, which plaintiffs contend violated the FHA.

State Farm moved to dismiss, and in 2023 the Court allowed the disparate impact claim against State Farm to proceed. The Court found that plaintiffs had demonstrated a statistical disparity against Black policyholders and had plausibly alleged it was the result of bias in State Farm's AI algorithm, writing, "From Plaintiffs' allegations describing how machine-learning algorithms—especially antifraud algorithms—are prone to bias, the inference that State Farm's use of algorithmic decision-making tools has resulted in longer wait times and greater scrutiny for Black policyholders is plausible." *Id.* at *9. The case is currently in discovery.

Also in 2022, a putative class of plaintiffs brought a lawsuit against SafeRent Solutions, LLC alleging that their automated tenant-screening services were biased against Black and Hispanic rental applications in violation of the FHA. *Louis, et al. v. SafeRent Solutions, LLC and Metropolitan Management Group LLC*, 685 F.S upp. 3d 19 (D. Mass. 2023). SafeRent sold a tenant-screening tool called SafeRent Scores that it promised would "automate human judgement by assigning a value to positive and negative customer application data, credit and public record information." Plaintiffs alleged that the algorithm behind SafeRent Scores relied on credit scoring data that reflected historic racial disparities, and that it did not consider whether applicants had federally funding housing choice vouchers. It alleged that both of these practices resulted in disproportionately more housing denials for Black and Hispanic applicants.

SafeRent moved to dismiss, but the court found that plaintiffs had plausibly alleged that SafeRent's algorithm disparately impacted Black and Hispanic applicants. The court also rejected SafeRent's argument that it could not be liable under the FHA because it did not make final housing decisions. On the contrary, the court held that SafeRent had liability because its SafeRent Scores product claimed to "automate human judgment" by making

housing recommendations based on an undisclosed algorithm that housing providers could not alter. In 2024, SafeRent agreed to pay more than $2 million to settle the litigation.

A similar case was brought in 2023 against AI vendor PERQ and a number of Illinois-based apartment complex owners who utilized PERQ's AI system to screen housing applicants. *Open Communities v. Harbor Group Management Co., LLC, et al.*, Case No. 23-CV-14070 (N.D. Ill.). Plaintiffs claimed that PERQ's "conversational AI leasing agent" issued blanket rejections to rental applicants who used housing choice vouchers, which they alleged had a disparate impact on African-American renters in violation of the FHA. The case was settled shortly after filing, with the defendants agreeing to allow an outside review of their application systems, anti-bias monitoring, and training on FHA compliance.

Conclusion: The Future of AI Bias Litigation

Given courts' holdings that have denied motions to dismiss discrimination claims premised on AI bias, it is likely that such lawsuits will continue to be filed in many areas that employ the technology. This potentially could include areas such as: applications for employment, housing, education, and loans; fraud detection in insurance and financial services; dynamic pricing in retail, financial services, and other industries; advertising in housing or employment; and other fields in which AI is used in a way that distinguishes between individuals who are potentially members of a protected class.

Although enforcement of disparate impact liability has been rolled back by the Trump Administration, federal anti-discrimination laws like the ADEA and FHA still provide a private right of action that protects workers and consumers by allowing them to bring their own disparate impact claims. In addition, several states have passed legislation to regulate how AI can be used in employment or insurance decisions. For example, Colorado, Illinois, and New York City have enacted laws that require employers to provide notice when AI systems are using in hiring decisions and require such systems undergo independent bias audits. And California enacted legislation in 2024 that prohibits health care coverage denials from being made solely by AI without an ultimate human decision-maker. More states are likely to follow and enact legislation to regulate the use of AI in a number of industries. This new legislation could provide new avenues and claims for potential plaintiffs impacted by AI bias.

Regardless of the current state of legislation in their jurisdictions, all companies that rely on AI should carefully assess the potential for bias in their systems. If their use of AI results in a disparate impact to a protected class of people, the companies and their AI vendors could face liability under federal or state law. In light of this growing litigation, companies would be wise to conduct independent AI bias audits where appropriate and ensure appropriate human involvement in decisions that could impact a protected class.

NOTED WITH INTEREST

PPP Hangover: Government Escalates Crackdown on Alleged PPP Loan Fraud

Years after the Covid pandemic subsided, U.S. regulators and prosecutors are escalating their crackdown on businesses and individuals they believe improperly obtained Paycheck Protection Program ("PPP") loans during the height of the crisis. In just the past few months, the Department of Justice has announced multi-million dollar False Claims Act settlements in several high-profile cases, including against Herb Chambers, a billionaire car dealer in New England; Azumi Restaurants, Ltd., a chain of high-end Japanese restaurants that operate under the "Zuma" name, among others; and Delta Air Lines (under the comparable Payroll Support Program for airlines). This trend is likely to continue, and even potentially expand into enforcement against lenders and financial technology companies that processed and approved fraudulent PPP loans, given that this effort aligns with the Trump Administration's priority of eliminating waste, fraud, and abuse from government programs, as well as the Department of Justice's recently published principles guiding the prosecution of white collar crime. *See* Matthew R. Galeotti, Head of the Criminal Division, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (May 12, 2025) ("[T]he Criminal Division will prioritize investigating and prosecuting white-collar crimes in the following high-impact areas: 1. Waste, fraud, and abuse, including health care fraud and federal program and procurement fraud that harm the public fisc.")

Hundreds of billions of dollars of PPP loans were distributed and forgiven by the federal government in a rapidly scaled program, when demand for PPP loans was high and the nation was plagued by uncertainty and fear at the outset of the unprecedented COVID-19 pandemic. Now that the dust has settled, the government

is revisiting those loans and looking for opportunities for civil and criminal enforcement. Scrutiny of PPP loans will almost certainly land on both conscientious business owners who made mistakes in their applications, as well as on fraudsters who intentionally sought to profit from knowing falsehoods. Separating one from the other may be difficult in certain circumstances, and the consequences of being targeted could be severe, including costly investigatory processes, as well as civil and criminal penalties, fines, and even prison sentences.

The CARES Act and the Establishment of the Paycheck Protection Program

Congress enacted the CARES Act in March 2020 in response to the Coronavirus pandemic. Section 1102 of the Act established the PPP in order to "provid[e] small businesses with the funds necessary to meet their payroll and operating expenses and therefore keep workers employed." Springfield Hosp., Inc. v. Guzman, 28 F.4th 403, 409 (2d Cir. 2022). "[A]ny business concern" could be "eligible to receive a [PPP] loan if" it had not more than 500 employees or otherwise did not exceed the SBA's applicable industry employee size standard for small businesses, whichever was larger. 15 U.S.C. § 636(a)(36)(D)(i)(I)–(II). The applicable industry size standard, in turn, depended on the business's North American Industry Classification System ("NAICS") code. Applicants with business activities spanning multiple NAICS codes needed to determine which code represented the primary focus of their work. For most businesses, when determining whether the business employed fewer than the applicable maximum number of employees, the SBA required that the applicant count all employees directly employed by the business as well as those employed by any of the business's "affiliates." Whether a company qualified as an "affiliate," however, turned on yet another regulatory provision containing additional factors and tests. Adding still another wrinkle, businesses in the accommodation or food services industries were exempted from counting the employees of their affiliates. 15 U.S.C. § 636(a)(36)(D)(iv)(I). Small businesses, lenders, and application processers at fintech companies tried to make these decisions quickly, before the allocated PPP funds were depleted.

Civil and Criminal Liability

Perhaps unsurprisingly, given these requirements, the rush, and the availability of PPP loans for individuals and small businesses without prior SBA experience, many individuals and companies ended up requesting and receiving PPP loans to which they were not entitled. Once the government is alerted to what it believes to be a wrongfully obtained PPP loan, it has a decision to make: whether to resolve the matter administratively (*i.e.*, the recipient of the loan simply pays it back) or to investigate and potentially pursue the loan recipient civilly or criminally.

Those facing civil investigations for PPP loan fraud are typically accused of knowingly certifying compliance with regulatory eligibility requirements for which they were not, in fact, eligible. Such knowingly false certifications can serve as the basis for civil FCA claims. For example, the government may claim that a company knew that it was not eligible for a PPP loan because it exceeded SBA size limitations, but nonetheless signed a PPP loan application stating that it was eligible. The knowing element here could presumably be proven through the testimony of a whistleblower or inculpatory statements.

FCA liability can also attach to entities that helped process and submit fraudulent PPP loan applications that they knew or should have known were false. There is, of course, a significant difference between, on the one hand, business owners who may have been confused by PPP regulations during COVID and applied for loans they were not entitled to and, on the other hand, sophisticated banks and fintech companies that knew they were processing fraudulent loans but turned a blind eye in order to reap profits. The latter has already been the focus of Congressional scrutiny, *see* "We Are Not The Fraud Police: How FinTechs Facilitated Fraud in the Paycheck Protection Program," Staff Report, Select Subcommittee on the Coronavirus Crisis, Dec. 2022, (accessible at https://coronavirus-democratsoversight.house.gov/sites/democrats.coronavirus.house.gov/files/2022.12.01%20How%20Fintechs%20Facilitated%20Fraud%20in%20the%20Paycheck%20Protection%20Program.pdf), and is likely to be the subject of government enforcement efforts coming down the pike. Criminal PPP cases typically involve allegations that records have been deliberately falsified or even fabricated. For example, the target of a criminal PPP case not only may have certified compliance with regulatory eligibility requirements, but also allegedly have submitted doctored documents such as payroll and bank statements, in support of its loan applications. Individuals who have been convicted for fraudulently obtaining millions of dollars in PPP loans have received years-long prison sentences. *See* U.S. Att'y's Off. for the N. Dist. Tex., *Mansfield Woman Sentenced to 7 Years in Prison for $8.5 Million PPP Fraud* (Jan. 16, 2025), available at https://www.justice.gov/usao-ndtx/pr/mansfield-woman-sentenced-7-years-prison-85-million-ppp-fraud; IRS, *Texas Couple Sentenced to Federal Prison for COVID Era PPPP Loan Fraud* (Oct 4, 2024), available at https://www.irs.gov/compliance/criminal-investigation/texas-couple-sentenced-to-federal-prison-for-covid-era-ppp-loan-fraud; U.S. Att'y's Off. – N. Dist. Ohio, *Ohio*

Man Sentenced to Prison for Paycheck Protection Program Loan Fraud Totaling More than $2M (May 21, 2025), available at https://www.justice.gov/usao-ndoh/pr/ohio-man-sentenced-prison-paycheck-protection-program-loan-fraud-totaling-more-2m.

Of course, some cases warrant neither civil or criminal enforcement. Where the government lacks evidence of knowing or intentional wrongdoing, and the issue instead appears to be the result of innocent mistake by a business during a global pandemic, PPP loan disputes can (and should) be resolved via administrative repayment of the wrongfully obtained funds.

Whenever anyone becomes aware of any government investigation into a PPP loan that was potentially wrongfully obtained, the first question is simple: whether the loan was, in fact, wrongfully obtained? Given the complicated regulatory regime and the government's imperfect information regarding private businesses, it is possible that the government regulator or prosecutor, or the *qui tam* relator, simply has the facts wrong. The best way to short-circuit an investigation into potential PPP fraud is to review the regulations and facts carefully to demonstrate that the loan was proper.

However, in cases where an investigation has developed to the point that the government is making contact with companies or potential witnesses, there is likely a viable argument that a loan was wrongfully obtained. At that point, the critical question is whether there is evidence of *knowing* or *intentional* misconduct to obtain a loan to which the recipient was not entitled. Even if the government can show that a person or company made a statement that proved to be false (concerning eligibility, workforce size, revenues, business classification, or something else), in the course of obtaining a loan, there is no liability or criminal exposure if the government cannot also prove that the false statement was knowingly or intentionally made. In certain circumstances, reliance on the advice of counsel may be a viable defense.

Any company that has been contacted by lenders, federal regulators, or prosecutors regarding PPP loans that were allegedly wrongfully obtained or approved should tread carefully. Cooperation may be beneficial, and yet initial communications with the government can have a big impact on your ability to defend and resolve allegations of wrongdoing successfully. Q

PRACTICE AREA NOTES

Artificial Intelligence Update:

Navigating the U.S. AI Regulatory Landscape After Defeat of Federal Moratorium

In July 2025, the U.S. Senate voted 99 to1 to remove a proposed federal moratorium on state and local AI regulation from the budget bill. This provision, originally part of the "One Big Beautiful Bill Act," would have blocked state and local governments from enforcing any AI-related laws for ten years. Its removal keeps states in control of AI regulation and ensures they will continue as the primary regulators of AI technologies.

For businesses, this means they must closely monitor and follow state-level requirements. Without a single federal standard, companies face varying rules across states and need to plan for long-term compliance with a wide range of laws. The absence of federal preemption means businesses can no longer wait for a future federal law to bring uniformity to ensure compliance.

Four Different State Approaches to AI Regulation

States have begun adopting a range of legislative models. Many target narrow issues, such as deepfakes or government procurement. But four states—Colorado, California, Texas, and Utah—have established broader frameworks that illustrate divergent regulatory approaches.

Colorado's Risk-Based Framework: Colorado's AI Act, effective February 1, 2026, establishes the most comprehensive regime to date. Modeled partly on the EU AI Act, it applies across industries and imposes obligations on developers and deployers of "high-risk" AI systems—those that influence employment, housing, healthcare, financial services, or similar opportunities. The statute requires companies to exercise reasonable care to mitigate foreseeable risks of algorithmic discrimination. Businesses must adopt written risk management policies, conduct annual impact assessments, and ensure transparency in system operations. The law recognizes adherence to established standards—specifically the NIST AI Risk Management Framework (NIST AI RMF)—as a potential affirmative defense. This approach centers on risk management and internal accountability.

California's Transparency-Oriented Approach: California's AI Transparency Act, effective January 1, 2026, targets risks from undisclosed AI-generated content, especially from large generative AI systems. It applies to providers with over one million monthly users

and focuses on consumer awareness. The law requires providers to offer a free public AI detection tool and to embed both latent and optional visible disclosures in AI-generated outputs. It also requires providers to ensure third-party users maintain these features. While narrower than Colorado's law, California's statute emphasizes transparency and consumer protection, fitting into a broader agenda addressing deepfakes, algorithmic bias, and child safety.

Texas's Targeted, Pro-Innovation Strategy: The Texas Responsible AI Governance Act, also effective January 1, 2026, adopts a focused approach designed to avoid regulatory overreach. Rather than regulating by risk, the statute prohibits only certain uses of AI—those developed or deployed with the intent to cause unlawful discrimination, behavioral manipulation, or the creation of deepfakes for illegal purposes. Unlike Colorado's effects-based framework, Texas requires proof of intent, setting a higher bar for enforcement. The law establishes an AI sandbox program for controlled experimentation. Enforcement rests exclusively with the Attorney General; the law does not create a private right of action. Texas's model limits liability and encourages innovation through regulatory restraint.

Utah's Minimalist Disclosure Regime: Utah's AI Policy Act, in effect since May 1, 2024, is the least intrusive of the four. The law focuses on disclosure for generative AI, requiring businesses to inform consumers when they are interacting with AI—but only if the consumer asks. For licensed professionals in fields like law, medicine, or accounting, proactive disclosure is required at the outset. Utah also offers a regulatory sandbox under its AI Learning Laboratory Program, encouraging innovation by providing temporary relief from obligations during testing. The statute imposes few substantive obligations and reflects a light-touch approach.

Regulatory Fragmentation and Compliance Challenges

The patchwork of state laws creates a complex compliance environment for companies that operate nationwide. What is allowed in one state may be banned in another, raising legal risks and costs. To address these challenges, companies should avoid piecemeal compliance efforts. Instead, they should create a centralized AI governance program that meets or exceeds the strictest state standards. A first step is to inventory all AI systems and assess whether they implicate sensitive areas such as employment, finance, or generative content.

High-impact systems should undergo formal impact assessments to evaluate risks related to bias, privacy, or accuracy. Where issues are identified, companies should adopt appropriate mitigations, such as modifying models or introducing human oversight. Transparency is critical, and companies should disclose AI use in consumer applications and provide explanations for AI-driven decisions when appropriate.

Adopting recognized frameworks like the NIST AI RMF can offer both practical benefits and potential legal protections. Colorado and Texas, for example, specifically mention such frameworks as possible safe harbors. With no federal standard, companies should assign staff or committees to track new state laws and update compliance programs as needed.

Although future federal AI regulation remains possible, businesses that already follow best practices in risk assessment and transparency will be better prepared for any future national standards. Integrating AI oversight into broader corporate governance—including privacy and cybersecurity—will help companies manage this evolving regulatory environment effectively.

Bankruptcy & Restructuring Update:

The Evolving Role of Chapter 15 in Corporate Restructuring

Before 2024, courts were divided over the permissibility of non-consensual third-party releases in bankruptcy cases. Some courts permitted non-consensual third party releases in limited circumstances, but others held that the Bankruptcy Code does not permit non-consensual third-party releases except in asbestos cases to the extent set forth in 11 U.S.C § 524(g).

In 2024, however, the Supreme Court in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), resolved these discrepancies; it ruled that the Bankruptcy Code does not authorize bankruptcy courts to enforce non-consensual third-party releases in chapter 11 cases (except for asbestos cases, under 11 U.S.C § 524(g)). *Harrington v. Purdue Pharma L.P.* has been widely covered. Two recent decisions by bankruptcy courts in New York and Delaware highlight a way that companies can get around that decision by using chapter 15 of the Bankruptcy Code to enforce non-consensual third-party releases entered by non-U.S. courts.

Chapter 15 of the Bankruptcy Code provides mechanisms for dealing with insolvency cases involving more than one country. Generally, chapter 15 cases are "ancillary" to primary proceedings brought in another country. Upon recognition of the foreign proceeding as a "foreign main proceeding" by the United States bankruptcy court, the automatic stay and other selected provisions of the Bankruptcy Code take effect within the United States. The "foreign representative" may also

seek additional "assistance" under section 1507(b) or additional relief under section 1521(a), such as seeking a stay of any action or proceeding "concerning the debtor's assets, rights, obligations, or liabilities."

In recent years, many non-United States jurisdictions have "liberalized" their restructuring laws to become more debtor-friendly, and allow for non-consensual third-party releases. Examples of such countries include the Netherlands, Germany, France, the United Kingdom, Brazil, Canada, and Mexico.

Before *Harrington v. Purdue Pharma L.P.* , there was a split in authorities – whereas some bankruptcy courts enforced non-consensual third-party releases entered by foreign courts as a matter of comity, the Fifth Circuit did not. *Compare In re Avanti Communications Group. PLC*, 582 B.R. 603 (Bankr. S.D.N.Y. 2018) (enforcing a scheme of arrangement sanctioned by a court in England that included nonconsensual third-party releases), *In re Sino-Forest Corp.*, 501 B.R. 655 (Bankr. S.D.N.Y. 2013) (same, Canadian court), and *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010) (same, Canadian court) *with Vitro S.A.B. de C.V. v. ACP Master, Ltd. (In re Vitro S.A.B. de C.V.)*, 473 B.R. 117 (Bankr. N.D. Tex.), (denying enforcement of a Mexican plan of reorganization that would have permanently enjoined suits in the United States against debtor's non-debtor subsidiaries on a non-consensual basis). The Fifth Circuit in vitro explained that bankruptcy courts could enforce non-consensual third-party releases entered by foreign courts, but required "something comparable" to the "extraordinary circumstances" required under the Bankruptcy Code. *Aff'd*, 701 F.3d 1031 (5th Cir. 2012).

Following *Harrington v. Purdue Pharma L.P.*, two bankruptcy courts have enforced non-consensual third-party releases in the chapter 15 context. In *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R*, 2025 WL 977967 (Bankr. D. Del. Apr. 1, 2025), the court granted recognition of a Mexican reorganization plan that incorporated non-consensual third-party releases, explaining that doing so promoted comity and was not manifestly contrary to United States public policy. And in *In re Odebrecht Engenharia e Construção S.A. – Em Recuperação Judicial*, 2025 WL 1156607 (Bankr. S.D.N.Y. Apr. 21, 2025), the court recognized a Brazilian plan. Although that plan did not contain non-consensual third-party releases, the proposed order had language creating a non-consensual third-party release. The court, relying on *Crédito Real*, explained that *Harrington v. Purdue Pharma L.P.* did not apply to chapter 15, and that such releases are not "manifestly contrary" to United States public policy.

The *Crédito Real* and *Odebrecht* cases may be the beginning of a trend of using chapter 15 as a route to effectuate non-consensual third-party releases that are otherwise unavailable in chapter 11. However, questions remain, particularly in light of the Fifth Circuit's decision in *Vitro*, as to what a foreign representative will be required to prove in order to enforce a foreign non-consensual third-party release. How will courts look at comity and public policy considerations in a post-*Harrington v. Purdue Pharma L.P.* world? Does *Harrington v. Purdue Pharma L.P.* change whether these releases are "manifestly contrary" to United States public policy? How courts address these questions will determine the long term viability of using chapter 15 to get around *Harrington v. Purdue Pharma L.P.*

To Victory and Beyond

The Firm recently secured a settlement on very favorable terms for clients Excalibur Almaz Limited (and associated companies), Arthur Dula, Anat Friedman, and John Buckner Hightower in their decade-long and hard-fought dispute (across multiple jurisdictions) with Japanese entrepreneur Takafumi Horie. The settlement, reached just days before trial in the Isle of Man was set to commence, resulted in the withdrawal of Mr. Horie's high-value fraud claims and his payment of £30,000 towards legal costs.

The dispute arose from an ambitious plan in 2005 to create a private space tourism company using refurbished Soviet-era spacecraft. Art Dula, a valued Quinn Emanuel client and a Texas attorney specializing in space law, established a relationship with Russian space authorities in the 1990s. From them, he developed a keen interest in returning the capsules to their former glory, through 'Excalibur Almaz,' the vehicle for the project.

Setting out for investment in the venture, Mr. Dula was introduced to Mr. Horie, a widely-known Japanese entrepreneur (perhaps best known for founding 'Livedoor,' a prominent Japanese internet service company, in the early 2000s). Mr. Horie invested $49 million in the project yet, shortly after the relevant agreements were executed, Mr. Horie was arrested (and later convicted) of securities fraud in relation to Livedoor's financial practices. He was sentenced to 2 years and 6 months in prison. Mr. Horie's arrest and conviction, aside from leading to the collapse of Livedoor, also spelled the end of the space project, which struggled to attract further funding that it desperately needed to refurbish the capsules and get the project off the ground. Mr. Horie ultimately assigned his rights (and his shares in Excalibur Almaz) to Livedoor, before agreeing a Settlement Agreement (the "2010 Agreement") containing broad releases and covenants not to sue.

Despite this, in 2014 Mr. Horie initiated proceedings in Texas alleging fraud and claiming he had been deceived about the viability of the space venture. The Texas courts dismissed the claims in 2017, and Excalibur Almaz pursued enforcement of the 2010 Agreement's exclusive jurisdiction clause in the Isle of Man courts.

In response, Mr. Horie pursued wide-ranging counterclaims, alleging fraud and breach of fiduciary duty in respect of the $49 million that he claimed he had been induced to invest. After years of wrangling in the Manx Courts, trial was scheduled for 2025. Just days before trial was set to commence, a settlement was reached involving the withdrawal by Mr. Horie of all claims and an agreement to pay Quinn Emanuel's clients' costs.

The clients are delighted to put this long dispute behind them, and can now finally move forward after a decade under the shadow of (baseless) fraud allegations. Q

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business litigation report
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