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APRIL 2026

Business Litigation Report

KEY RECENT DEVELOPMENTS IN SECURITIES LITIGATION IN ENGLAND

Three recent cases in England have reshaped the securities litigation legal landscape for institutional investors, issuers, litigation funders, and their advisers.

Each speaks, in different ways, to the central question haunting securities law on both sides of the Atlantic: what must a claimant/plaintiff actually prove about its own state of mind to establish reliance?

In England, the answer to that question remains unsettled but is moving in a direction more favorable to claimants than the state of the law in 2024. In particular, three cases have moved matters forward in a relatively short period of time: (1) *Allianz Funds Multi-Strategy Trust & Ors v. Barclays Plc* [2024] EWHC 2710 (Ch) ("Barclays"); *Persons Identified in Schedule 1 v. Standard Chartered Plc* [2025] EWHC 698 (Ch) ("Standard Chartered"); and *Credit Suisse Life (Bermuda) Ltd v. Ivanishvili* [2025] UKPC 53 ("Ivanishvili").

Barclays: Setback for Passive Investors

This case arose from the activities of Barclays' "dark pool" electronic trading system, known as "LX" or "LX Liquidity Cross," operated as part of its Equities Electronic Trading Division. In 2014, the New York Attorney General ("**NYAG**") filed a complaint against Barclays alleging that the bank had made materially false representations to institutional clients and the public regarding LX and its susceptibility to high-frequency trading. In January 2016, Barclays settled with the NYAG and the SEC, paying $70 million in total. The claimants—approximately 460 institutional investors—alleged that they suffered losses on their Barclays investments as a result of Barclays having made false and misleading statements, and having failed to disclose inside information in regulatory filings and other market disclosures. Claims were brought in England under section 90A and Schedule 10A of the Financial Services and Markets Act 2000 ("FSMA").

Barclays applied to strike out 241 of those claims, or alternatively for summary judgment, on the grounds that they disclosed no reasonable cause of action and had no real prospect of success. The central issues were: (1) whether passive investors—principally index-tracking and quant funds that had not themselves read or considered Barclays' published information—could satisfy the "reliance" requirement in paragraph 3 of Schedule 10A FSMA; and (2) whether a claim for "dishonest delay" under paragraph 5 of Schedule 10A required, as a precondition, that the issuer had subsequently published corrective information on a recognized information service. Paragraph 3 states as follows (emphasis added):

FIRM HIGHLIGHTS

Julianne Hughes Jennett Awarded Order of Merit by the President of Ukraine

London Partner Julianne Hughes Jennett has been awarded the Presidential Order of Merit by President Zelensky of Ukraine in recognition of her leadership of Ukraine's legal team in its interstate case against Russia arising from Russia's invasion in February 2022. Julianne was honored alongside a team of Quinn Emanuel associates including Marjun Parcasio, Graham Evans, Ben Evans, as well as Lauren Danckwerts. The case culminated in the landmark July 2025 European Court of Human Rights judgment in Ukraine's favor, finding that all victims of Russia's attacks fell within Russia's Article 1 jurisdiction and responsibility under the Convention and that Russia had violated the European Convention on Human Rights on a flagrant and unprecedented scale.

Quinn Emanuel Recognized at the 2026 Burton Awards

Quinn Emanuel Partner Mario Gazzola and Associate Júlia Rodrigues have been named winners of the "2026 Law360 Distinguished Legal Writing Award" at The Burton Awards, which recognizes outstanding achievements in law, with a particular emphasis on writing and reform. This was awarded for their work on the article "The Brazilian Supreme Court's August 18 Ruling Presents Challenges to Brazilian Entities and Litigants."

Alexander "AJ" Merton Named Co-Managing Partner of Washington, D.C. Office

We are delighted to announce that Alexander "AJ" Merton has been named Co-Managing Partner of Quinn Emanuel's Washington, D.C. office, joining Meghan McCaffrey in leading the expanding office. An 11-year veteran of the firm, AJ is a seasoned trial lawyer whose experience includes representing companies, boards, senior executives, and government officials in parallel criminal and civil proceedings, domestic and cross-border investigations, and high-profile congressional oversight matters before Senate and House committees, as well as advising cabinet nominees in Senate confirmation hearings. Beyond his practice, AJ has been recognized as a Global Leader in Crisis Management by Lawdragon, twice named The American Lawyer's Litigator of the Week, selected for Bloomberg Law's "They've Got Next: 40 Under 40," and ranked in The Best Lawyers in America: Ones to Watch.

Liability of Issuer for Misleading Statement or Dishonest Omission

(1) An issuer of securities to which this Schedule applies is liable to pay compensation to a person who—

a. (a) acquires, continues to hold or disposes of the securities in reliance on published information to which this Schedule applies, and

b. (b) suffers loss in respect of the securities as a result of—

   iii. any untrue or misleading statement in that published information, or

   iv. the omission from that published information of any matter required to be included in it.

Mr. Justice Leech granted summary judgment in Barclays' favor on both points. On reliance, he held that the common law test for reliance in deceit applies to Schedule 10A claims: claimants must prove that they actually read or heard the relevant misrepresentation, understood it, and were induced by it to transact. The Court firmly rejected the "price/market reliance" theory advanced by passive investors—the argument that, in an efficient market, published information is reflected in the share price, and that trading at that price therefore constitutes indirect reliance. This approach, the Court held, would be tantamount to importing the U.S. "fraud on the market" doctrine into English law—a step that Parliament had deliberately chosen not to take when enacting FSMA.

On dishonest delay, the Court held that a claim could only succeed where the delayed information had actually been published at some later point. In circumstances where Barclays had never published the true position about LX, there was no "delayed" publication and the claim was accordingly not made out. The practical impact was considerable: the judgment disposed of some £332 million of claims. The case settled in its entirety on confidential terms in December 2024.

Standard Chartered: The Door Reopens (A Bit)

The underlying claims in Standard Chartered concern alleged untrue or misleading statements in the bank's published information between February 2007 and April 2019 in connection with serious regulatory misconduct: sanctions breaches that resulted in settlements with the SEC (in 2012 and 2019), an FCA final notice in relation to anti-money laundering failings, and bribery allegations connected to an entity in which Standard Chartered held a minority stake. The claimants—a large number of institutional investors—allege that this misconduct was concealed from the market, artificially inflating the share price and causing loss when the truth emerged.

Standard Chartered applied to strike out, or for summary judgment on, two sets of claims. The first—the "Common Reliance Claims"—were framed on the same price/market reliance theory rejected in Barclays: that passive investors had relied on the market price of Standard Chartered shares as a reflection of its published information. The second—the "Delay Claims"—alleged dishonest delay in the publication of information, in circumstances where Standard Chartered had not subsequently published corrective disclosure. Both issues squarely engaged the principles in *Barclays*. Standard Chartered argued that Leech J's analysis in *Barclays* was clear and that Mr. Justice Michael Green was obliged to follow it as a matter of judicial comity.

Justice Green declined to follow *Barclays* in either respect. On price/market reliance, he declined to strike out the Common Reliance Claims, holding that this was a developing area of law in which the full range of arguments had not been fully explored at an interlocutory hearing and that the matter should proceed to trial. Crucially, the judge expressed doubt about whether Barclays was correctly decided on this point. He noted that the desire to avoid speculative U.S. style litigation had been invoked as a reason for adopting a restrictive approach, but questioned whether "reliance" rather than the dishonesty requirement was the correct limiting principle. His view was that the real-world ways in which institutional investors receive and act on market information—including through intermediaries, investment managers, and market pricing mechanisms—deserved careful examination on full evidence before the door was definitively closed on passive claimants.

On dishonest delay, Justice Green declined to follow the holding that corrective publication was a precondition for a delay claim. In his view, the statute did not expressly require this, and importing it would risk placing an additional onerous requirement on claimants that found no clear support in the statutory text.

Standard Chartered does not reverse *Barclays*—it is a refusal to follow it, and both decisions come from courts of first instance, so neither technically binds the other. But the divergence is practically significant. It means that the questions of price/market reliance and dishonest delay without corrective disclosure remain live. For defendants, it means that the comfort of *Barclays* cannot be relied upon as a definitive statement of the law pending appellate clarification. An appeal of the *Standard Chartered* ruling which had been listed for January 2026 was expected to produce the first appellate guidance on these issues, and possibly the first judicial engagement with the question of whether English courts are willing to accommodate a form of U.S.-style market reliance theory. However, in December 2025, it was publicly announced that the case in its entirety had been settled on confidential terms, so that appeal (and the subsequent trial) did not proceed.

Ivanishvili: Further Eroding of *Barclays*

This case has its origins in a long-running fraud perpetrated by Patrice Lescaudron, a Credit Suisse private banker, against Bidzina Ivanishvili, the former Prime Minister of Georgia. From around 2005, Mr. Ivanishvili maintained a substantial private banking relationship with Credit Suisse. In 2011 and 2012, on the bank's recommendation, he restructured investments worth over $750 million into premiums payable under two life insurance policies issued by Credit Suisse Life (Bermuda) Ltd ("CS Life"), a Bermudan subsidiary of Credit Suisse AG. The policy assets were held in segregated accounts managed at the discretion of the bank. In 2015, Mr. Ivanishvili discovered that Lescaudron had been fraudulently misappropriating the policy assets—conducting unauthorized trades, fabricating valuations, and deceiving him as to the true state of his portfolio. Lescaudron was convicted of criminal offenses in Switzerland in 2018 and later died. Mr. Ivanishvili and family members brought proceedings in Bermuda against CS Life, ultimately obtaining an award of approximately $607 million at first instance.

The case came before the Privy Council (effectively the Supreme Court) on a number of issues. Of interest is the cross-appeal by Mr. Ivanishvili in respect of his fraudulent misrepresentation claim. The Bermuda Court of Appeal had dismissed that claim on the ground that Mr. Ivanishvili did not prove he was consciously aware of the implied representations said to have been made by Lescaudron at the time he entered the life insurance policies—namely, that CS Life would manage the policy assets honestly and not fraudulently. The question for the Privy Council was whether conscious awareness of a representation is a legal requirement of the tort of deceit.

The Privy Council held that conscious awareness of the relevant representation is **not** a legal requirement of deceit. It overturned a line of English authorities that had suggested otherwise. The Privy Council reasoned that reliance is ultimately a matter of causation: did the false representation operate on the claimant's mind in a way that contributed to the decision that caused loss? A person may form and act upon beliefs without any conscious or active awareness of the basis for those beliefs—this is, as Lord Leggatt put it, an everyday feature of human experience. The question should be whether the defendant's conduct caused the claimant to hold a false assumption or belief, and for that assumption or belief to have been causative of loss. Requiring a discrete moment of conscious awareness was not justified by principle and was inconsistent with the way people actually make decisions, particularly in the context of complex financial arrangements. The Privy Council expressed the principle by reference to both English and Bermudan law, noting that the two systems are the same on this point. The cross-appeal was nonetheless dismissed because the misrepresentation claim was found to be time-barred under Georgian law.

Ivanishvili is a decision of considerable importance. It cuts against the most restrictive reading of *Barclays*. If conscious awareness of a specific representation is not required in a claim for deceit, it becomes harder to argue that it should be an absolute requirement under Schedule 10A FSMA—a point made in *Standard Chartered* before the Privy Council issued its ruling. The decision opens the door (a bit) to claims by passive investors and those acting through institutional intermediaries, who may have held a false assumption about the integrity of an issuer's disclosures without ever consciously identifying the specific statements that were false.

Key Observations and Looking Ahead

First, the reliance question will not be conclusively resolved without appellate intervention. *Barclays* and *Standard Chartered* are in tension. Parties and funders need to plan for a period of sustained uncertainty. Portfolios of securities claims that depend on passive investor claimants should be assessed under both the *Barclays* and *Standard Chartered* approaches.

Second, the *Ivanishvili* decision is a doctrinal shift that will reverberate beyond its Bermudan origins. The Privy Council's holding that conscious awareness of a representation is not required for deceit removes one of the major technical barriers that had been deployed against passive investors and those acting through institutional structures. While the decision does not directly address Schedule 10A FSMA, it substantially undermines the inferential chain that led Justice Leech in *Barclays* to dismiss passive claimants.

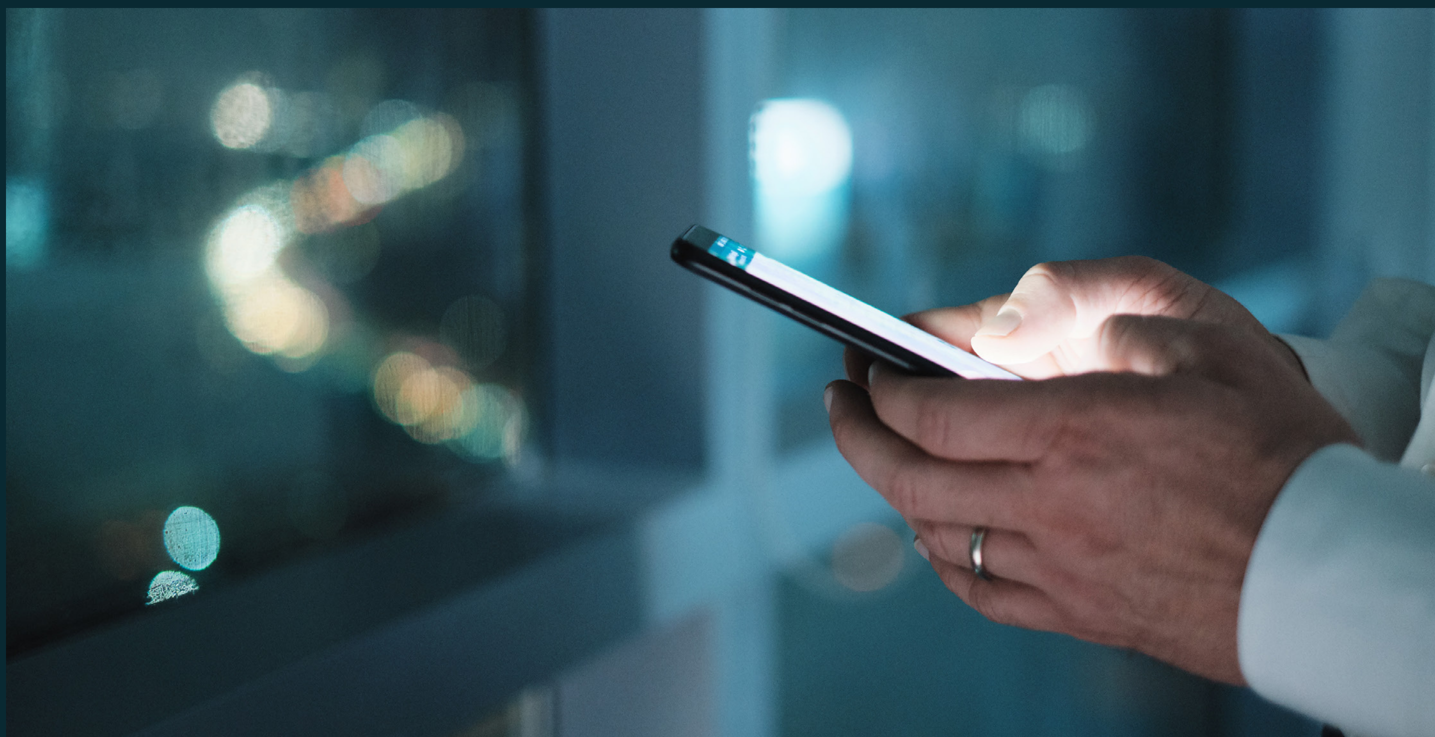
The U.S. and English approaches are converging in some respects and diverging in others. Both jurisdictions are actively limiting the expansion of omissions-based liability. Both are grappling with the extent to which automated or market-mediated reliance can substitute for individual proof. But the structural differences are significant: the U.S. class action mechanism and the fraud-on-the-market presumption all combine to produce a very different litigation environment from the English regime, which relies on individual or coordinated institutional claims, group litigation orders, and a statutory framework that imposes a reliance requirement with no settled presumption in the claimant's favor. English claimants—particularly U.S.-based institutional investors pursuing London-listed issuers—should take careful advice on which jurisdiction offers the more viable route to recovery, bearing in mind that the two regimes may offer complementary or conflicting remedies.

Finally, practitioners should note the growing significance of litigation funding in English securities mass claims. The Litigation Funding Agreements (Enforceability) Bill, which aims to reverse the Supreme Court's decision in *PACCAR Inc v. Road Haulage Association* [2023] UKSC 28, will, if enacted, restore the enforceability of damages-based agreements in funded litigation. There is also the potential of opening up collective actions beyond just competition claims. This has a direct bearing on the economics of securities claims: greater funding certainty will encourage more claims, particularly in circumstances where the *Standard Chartered* decision has offered renewed hope to passive investor claimants.

English securities litigation is at a key point of development. The decisions of the past year have narrowed the playing field (*Barclays*) and reopened it (*Standard Chartered, Ivanishvili*). The law on reliance under Schedule 10A FSMA and under the tort of deceit is unsettled to an unusual degree.

NOTED WITH INTEREST

Disappearing Messages, Permanent Consequences: Ephemeral Messaging in Discovery



Whereas email began to dominate offices ten years ago, employees today communicate through an array of platforms. This has changed the discovery of electronically stored information ("**ESI**") and created new challenges for litigators and compliance professionals. Among new communication tools, ephemeral messaging platforms like Signal have emerged as a particular concern for courts and regulators. These applications are designed to automatically and permanently destroy messages after they are read (or after a specified period). They have become popular in corporate environments—ostensibly for their robust encryption and privacy features—but raise serious questions about ESI preservation obligations when litigation arises (or is in reasonable contemplation).

How Ephemeral Messaging Works

Signal, Snapchat, Telegram and WhatsApp are just some of the platforms that allow users to send self-destructing messages that vanish after being viewed or after a predetermined period. Because these applications often combine automatic deletion with end-to-end encryption (the data is encrypted on the sender's device and only decrypted on the recipient's device), a message that has "disappeared" cannot be recovered, even by the platform provider.

Signal, in particular, has become synonymous with ephemeral messaging. Signal first grew in popularity as a secure communication tool for journalists to contact sources (to this day, outlets like The Washington Post and The Guardian

solicit confidential tips on Signal), then gained mainstream attention during the 2020s as executives and government officials adopted it for sensitive discussions on both company-issued and personal devices.

Auto-delete is not the default setting on Signal; messages are indefinitely preserved unless a participant enables the "disappearing messages" feature. Once activated, Signal displays the selected interval (as short as 30 seconds to as long as four weeks) at the top of every chat. Any participant can modify or disable the setting at any time, and all participants receive a notification of the change. This design makes it difficult for users to claim ignorance after their messages are destroyed.

Federal Agencies Put Companies on Notice Over Ephemeral Messaging

In recognition of the growing use of ephemeral messaging, the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") issued joint guidance on January 26, 2024. The agencies announced they were updating their standard preservation and voluntary access letters (and compulsory processes) to warn explicitly that failure to preserve ephemeral messages could result in civil spoliation sanctions or even obstruction of justice charges.

The warnings were not empty threats. In April 2024, the FTC brought discovery motions accusing senior Amazon executives (including Jeff Bezos) of using Signal's auto-delete features while discussing an FTC antitrust investigation. In response, a Washington District Court ordered a Rule 30(b)(6) deposition of an Amazon corporate representative and invited further motion practice. The matter is due for trial in March 2027. Later in 2024, the FTC accused Albertsons Companies executives of intentionally deleting text messages during the FTC's investigation of Kroger's proposed $24.6 billion acquisition of Albertsons. The court permitted the FTC to continue investigating whether Albertsons was withholding key communications and allowed questioning of witnesses at trial about their deleted texts. The companies terminated the deal after the FTC won a preliminary injunction.

Companies Cannot Afford to Ignore Ephemeral Messaging Risks

It appears that the Trump Administration (for now) has paused federal agency enforcement of recordkeeping and ephemeral messaging policies; while DOJ and FTC policies remain in place, agency actions have ground to a halt since the January 2025 inauguration. Yet it would be a mistake to interpret this as permission for companies to relax their internal policing. The risks of inadequate message preservation extend far beyond federal penalties.

First, companies face enforcement risks from state and international regulators. In particular, the issue has taken on heightened political significance in Europe. In June 2024 the European Commission levied a €15.9 million fine against a French company whose senior employee deleted WhatsApp messages he had exchanged with a competitor. In explaining the decision, Margrethe Vestager, then the person in charge of competition policy, emphasized that companies undergoing regulatory inspections must "ensure that employees do not delete or manipulate business records," including "communications on mobile phones." In July 2025, the European Commission was forced to acknowledge that it destroyed or lost Signal messages exchanged between its president Ursula von der Leyen and Pfizer's chief executive while negotiating the purchase of Pfizer's coronavirus vaccine.

Second, danger still lies in civil litigation, where parties can face serious repercussions if employees have been found to use ephemeral messages. Federal Rule of Civil Procedure 37(e)(2) allows federal courts to impose sanctions where "[ESI] that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it." See *Pable v. Chicago Transit Auth*., 145 F.4th 712 (7th Cir. 2025) (affirming dismissal because *inter alia* the plaintiff had intentionally deleted his Signal messages discussing the case and his justification "evolved over time" and was contradicted by evidence); *Fed. Trade Comm'n v. Noland*, 2021 WL 3857413, at *1 (D. Ariz. Aug. 30, 2021) (granting an adverse inference instruction for similar misconduct); In *re Google Play Store Antitrust Litig*., 664 F. Supp. 3d 981, 994 (N.D. Cal. 2023) (where Google failed to preserve chats, delaying sanctions until the end of fact discovery but declining terminating sanctions and noting courts "exercise caution" before granting "severe measures"); *but see Hunters Cap., LLC v. City of Seattle,* 2023 WL 184208, at *12 (W.D. Wash. Jan. 13, 2023) (no spoliation where plaintiffs used Signal but did not turn on the disappearing messages feature).

Practical Implications

When mishandled, ephemeral messaging can result in financial penalties, litigation sanctions, and damaged credibility. For companies and their counsel, the implications are substantial and immediate.

One critical lesson is that standard-form litigation hold notices for "email" and "electronic documents" are no longer sufficient. These notices need to encompass all platforms that employees use for business communications. Ideally, notices should flag and provide clear instructions on how to disable auto-delete features, recognizing that many employees may not understand the technical settings on their devices.

Further, ignorance is not a defense: cases increasingly suggest an affirmative duty for companies to understand and police non-workplace communications tools. For example, Albertsons faced sanctions despite litigation holds that reminded custodians of their obligation to disable cell phone auto-delete settings. In cases such as Pable where counsel involves itself with alleged spoliation, the consequences can be even more severe. Companies should consider technical controls such as mobile device management software, regular audits of employee communication practices, and monitoring to ensure compliance with policies.

PRACTICE AREA UPDATES

Artificial Intelligence Update:

Generative AI and Section 230: Where Courts Are Drawing the Line

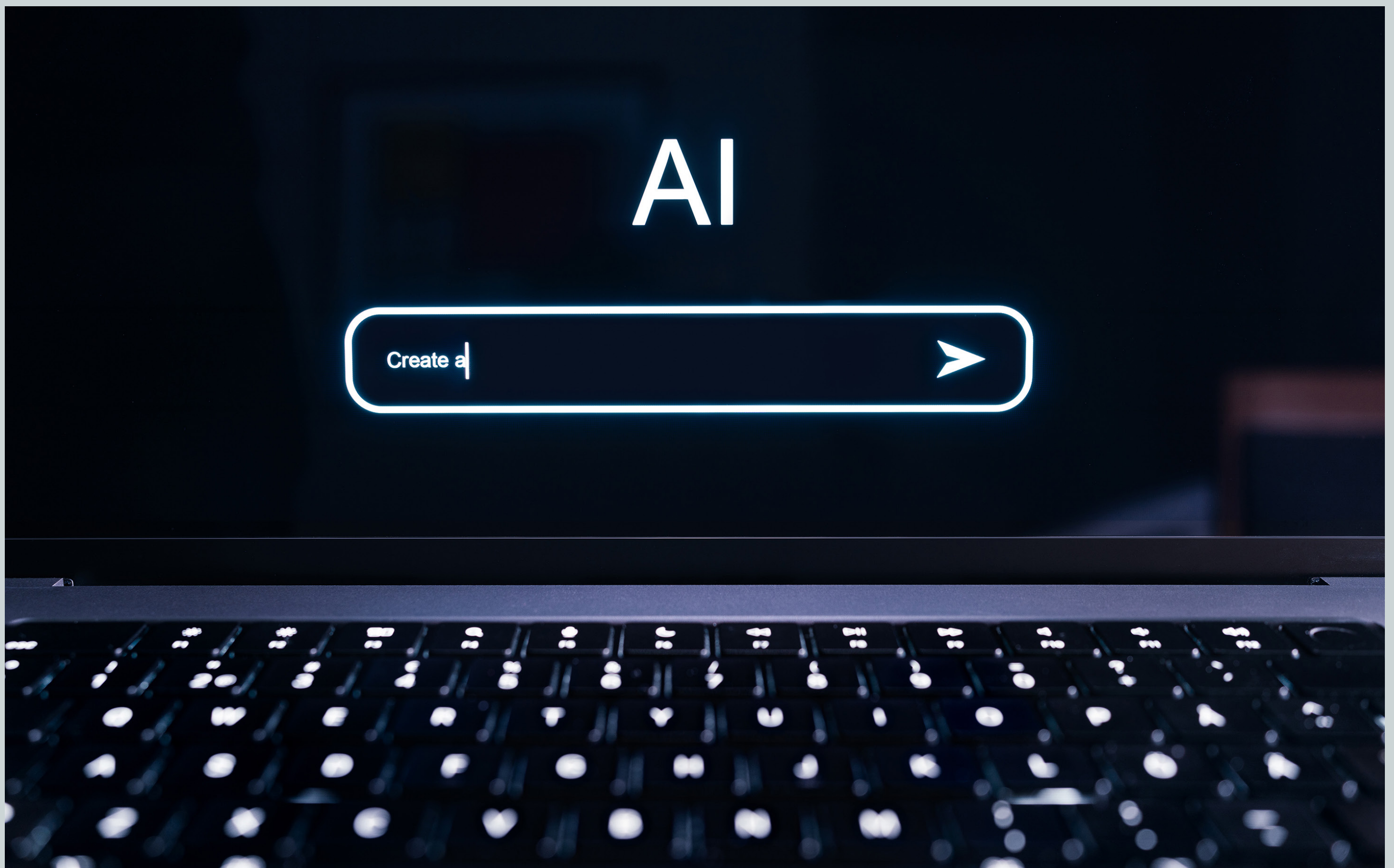
A growing number of lawsuits are testing how existing law applies to generative AI systems, particularly conversational AI and large language models. Commentary on generative AI has often framed liability questions in terms of whether Section 230 of the Communications Decency Act (47 U.S.C. § 230) would shield developers and platforms. But the first wave of cases suggests that many disputes involving conversational AI are being litigated on theories that do not depend on Section 230 at all.

Instead, courts are allowing claims to proceed, or resolving them, under traditional principles of products liability, negligence, discrimination law, and defamation. The emerging pattern is not a narrowing of Section 230's scope, but a shift in the kinds of claims being brought and litigated.

Section 230 Governs Traditional Platform Functions

Section 230 remains a powerful defense where claims depend on treating a defendant as the publisher or speaker of third-party content. Courts continue to apply the statute broadly in cases involving recommendation algorithms, moderation decisions, and the organization or display of user-generated content. E.g., M.P. by & through Pinckney v. Meta Platforms Inc., 127 F.4th 516, 521 (4th Cir. 2025), cert. denied sub nom. M. P. By & Through Pin v. Meta Platforms Inc., 146 S. Ct. 287 (2025); Six4Three, LLC v. Facebook, Inc., 109 Cal. App. 5th 635, 655 (2025).

Courts remain divided over how far those protections extend in cases involving highly personalized recommendation systems. In Anderson v. TikTok, Inc., 116 F.4th 180 (3d Cir. 2024), the Third Circuit allowed certain claims to proceed based on allegations that TikTok's recommendation algorithm affirmatively steered harmful content to a minor user, reasoning



that an algorithmically curated feed may in some circumstances be characterized as a platform-created product. But other courts have rejected that approach. In Patterson v. Meta Platforms, Inc., 2025 WL 2092260 (N.Y. App. Div. July 25, 2025), the court held that recommendation algorithms remain protected editorial functions, warning that removing Section 230 protection based on algorithmic curation would expose platforms to effectively unlimited liability for third-party content.

This circuit split on whether algorithmic recommendation systems constitute protected editorial functions may prove relevant as courts begin to confront questions about the liability of autonomous AI systems that generate original content, as opposed to merely curating third-party material. The underlying tension—whether algorithmic systems are editorial tools or independent products—has clear implications for conversational AI.

Generative AI Cases Are Being Litigated on Different Theories

By contrast, courts addressing conversational AI systems have generally centered their analysis around the design, operation, and foreseeable risks of the systems themselves.

In Garcia v. Character Technologies, Inc., 785 F. Supp. 3d 1157 (M.D. Fla. 2025), a federal district court declined to dismiss claims arising from a minor's alleged harmful interactions with a conversational AI chatbot. The court held that the defendants plausibly owed a duty of care based on foreseeable risks associated with anthropomorphic AI systems and declined to resolve defenses premised on treating the defendants as publishers at the motion-to-dismiss stage. Garcia illustrates how plaintiffs have pursued claims based on the design and operation of conversational AI systems, rather than on the publication of third-party content.

Similarly, courts have been willing to resolve claims involving allegedly false statements generated by large language models under traditional defamation doctrines. In Walters v. OpenAI, L.L.C., Case No. 23-A-04860-2 (Ga. Super. Ct. Gwinnett County May 19, 2025), a Georgia court granted summary judgment to AI developer OpenAI on a claim based on incorrect statements generated by ChatGPT, applying ordinary fault and damages principles. The court found that ChatGPT's disclaimers and warnings meant that no reasonable person could have understood its output as communicating actual facts, and that OpenAI's extensive efforts to reduce AI "hallucinations" demonstrated the absence of negligence or actual malice. The decision suggests that AI developers who implement robust mitigation measures and provide clear warnings to users may successfully defend against defamation claims under traditional tort standards.

The Importance of Framing Claims

The emerging pattern is not a wholesale retreat from Section 230, but a shift in how claims are framed. Claims that depend on treating an online service as a publisher of information continue to encounter strong Section 230 defenses. But claims framed around system design, safety features, duty of care, or platform conduct have sometimes proceeded under traditional legal frameworks that do not implicate the statute.

This distinction is not unique to generative AI. Some courts have allowed claims to proceed in cases alleging harm arising from product design or platform conduct, even where third-party content played a role in the underlying events. E.g., Lemmon v. Snap, Inc., 995 F.3d 1085 (9th Cir. 2021); In re Social Media Adolescent Addiction/Personal Injury Prods. Liab. Litig., 702 F. Supp. 3d 809 (N.D. Cal. 2023); Liapes v. Facebook, Inc., 95 Cal. App. 5th 910 (2023). In Liapes, for example, the California Court of Appeal found that Section 230 did not bar discrimination claims challenging Facebook's ad-delivery algorithms where those algorithms allegedly made their own discriminatory decisions.

Early generative-AI cases reflect a similar analytical approach. Where alleged harm is plausibly attributed to the design and operation of an automated system, rather than to the publication of third-party content, courts have been willing to evaluate claims under traditional legal principles without discussing Section 230. Accordingly, the closer a claim comes to plausibly challenging system design, safety features, or AI's autonomous decision-making, rather than the publication of third-party content, the more likely it is to proceed beyond the pleading stage. This pattern suggests that AI developers may face greater exposure from design-defect and duty-of-care theories than from claims that would traditionally trigger Section 230 immunity.

Conclusion

As generative AI litigation moves into discovery and trial, the factual record regarding how systems are designed, trained, and deployed is likely to become the decisive factor in determining whether courts characterize a system as a neutral intermediary engaged in publication or as a product whose design and operation are subject to traditional tort principles. Companies deploying generative AI should account for these dynamics in system design and documentation, as architectural and recordkeeping choices made today may shape liability exposure tomorrow.

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Appellate Update:

A Review of Selected Decisions of Interest to the Business Community from the U.S. Supreme Court's 2024-2025 Term

In the October 2024 term, which finished in July 2025, the U.S. Supreme Court handed down several cases relevant to the business community. Continuing a pro-business trend from prior years, most of the Court's major decisions will likely have a positive or, at worst, a neutral effect on the business community. This is most acutely seen in the area of administrative law, where the Court loosened standing requirements and hopefully streamlined environmental permitting. But the results were not universally pro-business. The Court rejected nationwide injunctions and widened Civil RICO liability—two holdings that could negatively impact businesses.

Trump v. CASA, Inc.

In *Trump v. CASA, Inc.*, the Supreme Court addressed whether lower courts have the power to enjoin executive or legislative policy universally through their inherent equitable authority. These types of universal injunctions had become increasingly common—to the point where nearly every major presidential act was immediately frozen by a federal district court. In *CASA*, the Supreme Court ended that practice. It held that courts do not have the equitable power to issue universal injunctions; they can issue injunctions that grant complete relief only to the parties before them. Under *CASA*, businesses will have a harder time benefiting from the efforts of others in challenging new and intrusive government policies. But, as the Court acknowledged, other avenues may remain available to lessen *CASA*'s impact. For instance, parties can seek to certify a nationwide class of similarly situated businesses and then seek a preliminary injunction. And the Court explicitly left open the separate question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action across the board.

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Seven County Infrastructure Coalition v. Eagle County

In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court addressed federal administrative action under *Loper Bright* – the landmark case from the prior term overruling Chevron and doing away with the practice of deferring to an agency's interpretation of ambiguities in the statutes that they administer. Nonetheless, the Court in *Loper Bright* recognized that Congress can sometimes delegate discretion to agencies and that courts should respect those delegations when present. *Seven County* is such a case. The case arose from a proposal to build a pipeline in Utah. Following extensive public comment, the Surface Transportation Board issued the environmental-impact statement that the National Environmental Protection Act requires. The D.C. Circuit found that the Board's impact statement was inadequate because it did not address upstream oil drilling and downstream refining impacts. The Supreme Court reversed. It found that Congress granted agencies broad discretion over environmental-impact statements, and that it is thus not the job of the courts to micromanage what details go into those statements. Impact statements serve procedural, not substantive, ends. In practical terms, *Seven County* means that environmental and other advocacy groups are less likely to be able to hold up new infrastructure projects based on perceived inadequacies in environmental-impact statements, thereby streamlining the federal permitting process for capital-intensive development. The case also shows that, in some instances, deference to agencies can promote business interests.

Diamond Alternative Energy LLC v. EPA

In another administrative-law case, *Diamond Alternative Energy LLC v. Environmental Protection Agency*, the Court made it easier for businesses to seek judicial relief from burdensome regulations that may affect them only indirectly. In the past, businesses that were affected only indirectly by regulations had trouble proving Article III standing—which requires a concrete injury traceable to the regulation and redressable by a court. No more. The Supreme Court held that courts may make "commonsense" inferences about regulated entities' behavior when assessing whether indirectly affected parties have Article III standing. This decision means that companies need not be directly regulated to have standing to sue. Instead, any business suffering predictable economic harm downstream from agency regulations or actions now has a viable pathway to challenge the regulation or action in federal court.

Medical Marijuana, Inc. v. Horn

In *Medical Marijuana, Inc. v. Horn*, the Supreme Court expanded the reach of the federal RICO statute. There, the Supreme Court resolved a circuit split over whether business or property losses derived from personal injuries can trigger potential RICO liability—along with its attendant treble damages. The Court, unfortunately, answered yes: Business or property damage resulting from a personal injury can fall within the RICO statute. *Horn* could thus incentivize personal-injury attorneys to turn personal-injury cases into RICO cases—especially given the possibility of treble damages. How *Horn* ends up being used by plaintiffs' attorneys and applied by lower courts is something that businesses—and product manufacturers in particular—should watch carefully.

English High Court Trial Fully Vindicates SoftBank, Rejecting Credit Suisse's $440M Claim in Its Entirety

Quinn Emanuel recently successfully defended SoftBank against a substantial and high-profile U.S. $440 million insolvency-linked claim before the English High Court. The Quinn team defeated the claim brought by Credit Suisse, which alleged that SoftBank had sought to orchestrate for its own ends a complex restructuring involving the Greensill Group in late 2020.

Following a five-week trial in mid-2025, in October 2025 the Court rejected the claim entirely, finding that no relief should be ordered against the SoftBank Defendants. Indeed, SoftBank's conduct was vindicated by the Court. The Court found that SoftBank had acted "in good faith," "did not know or suspect" that Greensill intended to prejudice its creditors, and in fact "positively believed" (and had "reasonable grounds" for believing) that Greensill had already used the $440 million to make Credit Suisse whole, as was its intended purpose. This landmark judgment marked one of the first major trial conclusions arising from the Greensill collapse.

The case arose out of an out-of-court restructuring in late 2020 concerning two SoftBank portfolio companies, Greensill and Katerra. Greensill had securitized underlying exposure to Katerra. Credit Suisse was the holder of the relevant securitized notes. When Katerra became heavily financially distressed, Greensill approached SoftBank (which held significant investments in both Greensill and Katerra) to solve the Katerra problem. SoftBank injected $440 million into the restructuring on the understanding that Greensill would make Credit Suisse whole by repurchasing or repaying the notes. However, without SoftBank's knowledge and contrary to its understanding, Greensill released the underlying security before it had repurchased or repaid the notes. Greensill subsequently became insolvent, the notes defaulted, and Credit Suisse was left with losses of $440 million.

Following collateral disclosure proceedings issued by Credit Suisse under U.S.C. 28 § 1782, Credit Suisse, represented by Freshfields LLP, formally issued proceedings against SoftBank in the English High Court in early 2023. Credit Suisse claimed the face value of the notes from SoftBank. That was on the basis that SoftBank had allegedly "procured" the restructuring to try and obtain a debt-free Katerra for itself.

As noted, the Quinn Emanuel team successfully defended SoftBank from those allegations. Most importantly, the Court found that SoftBank was entirely innocent, and would never have agreed to inject the $440 million if it had known or suspected that the money would not be used promptly to pay off Credit Suisse. Credit Suisse's claim was rejected and it was ordered to pay SoftBank's costs.

The victory vindicated SoftBank and its senior executives, who faced serious allegations of bad faith conduct. The win represents a landmark victory for Quinn Emanuel's insolvency and restructuring litigation and structured finance litigation practices.

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