

AI Accountability from the Outside In: Corporate Liability, AI Governance, and Managerial Duties

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Abstract

Questions of AI accountability arise both outside and inside the corporation. AI-related harms to third parties can trigger corporate liability, but also direct and derivative claims against directors and officers, transmitting external risks inward to boards and the C-suite. On the outside, existing doctrines of corporate liability remain broadly adaptable, though attribution models dependent on discrete human fault grow strained as AI systems operate with opacity and autonomy. Liability regimes requiring heightened knowledge or intent are equally vulnerable: AI may generate harmful outcomes without any human or corporate actor possessing the requisite state of mind, creating accountability gaps. Internally, similar challenges reappear. The details of directors' and officers' AI-related fiduciary duties remain unsettled, though the contours of external corporate liability for algorithmic harms may help give them shape. While there are new challenges, AI does not yet transform the current fiduciary duties system. In the long term, however, AI may prove a catalyst for a fundamental shift toward fully depersonalized, entity-centered corporate accountability, one in which managers' personal fault will play a marginal role.

Keywords: AI accountability, Corporate liability, Fiduciary duties, Algorithmic harm, Board of directors, Officers and managers, Corporate governance

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I. INTRODUCTION

Artificial intelligence is no longer a technology of the future. It is already taking hold and shaping almost every aspect of corporate activities. But the harms it generates are also increasingly real. Developers and deployers of AI and algorithmic products face allegations that the technology is causing physical, economic, and reputational harms. From violent acts and suicide to mental health issues, educational disruption, discrimination, and defamation, a

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range of negative outcomes tied to AI is emerging.¹ With further advances, including in AI autonomy or ‘agenticness,’ these risks and harms will multiply.²

Corporations are the primary developers, deployers, and beneficiaries of AI, and the law is increasingly being called upon to hold them accountable when AI causes harm to third parties. Courts and scholars are already grappling with how established doctrines of tort, agency, and product liability apply to systems that operate with opacity and degrees of autonomy that sit uneasily with traditional liability frameworks premised on human acts, intentions, and foreseeability.³ The nature of AI systems makes it difficult to construe and attribute blame. Their outputs are difficult to predict, and they learn, evolve, and may act with independence, all of which strains conventional requirements of culpability. Accountability is further complicated by multi-layered supply chains through which AI systems are built and delivered, and by a multiplicity of actors whose contributions may each have played some causal role in producing the harm. These difficulties are compounded at the evidentiary level, with claimants facing considerable obstacles to meeting their burden of proof.

A parallel debate is taking shape about what happens inside the corporation. As AI becomes embedded in corporate operations, questions arise as to what directors and officers are required to do in relation to it: how they should govern and oversee their own use of AI, that of their advisors and contractors, and of the corporation. The view that corporate leadership may legitimately use AI – or in some instances perhaps even *must* use it – is uncontroversial, but the difficulties are in formulating usefully precise boundaries and practices that allow appropriate reliance on AI systems while avoiding excesses.⁴ Emerging

¹ See *infra* Part II.

² See, e.g., Yonathan Arbel et al., *Systemic Regulation of Artificial Intelligence*, 56 ARIZ. ST. L.J. 545, 556–69 (2024) (describing various general risks of AI).

³ On foreseeability in particular, see for example Mihailis E. Diamantis, *Reasonable AI: A Negligence Standard*, 78 VAND. L. REV. 573, 584 (2025); Phillip Morgan, *Tort Law and AI: Vicarious Liability*, in THE CAMBRIDGE HANDBOOK OF PRIVATE LAW AND ARTIFICIAL INTELLIGENCE 135, 145–48 (Ernest Lim & Phillip Morgan eds., 2024); Omri Rachum-Twaig, *Whose Robot Is It Anyway?: Liability for Artificial-Intelligence-Based Robots*, 2020 U. ILL. L. REV. 1141, 1152–57 (2020).

⁴ As one commentator has observed, attempting to achieve this balance represents a “legal minefield” for fiduciaries. Matthew R. Gaske, *Corporate Officers’ Fiduciary Duty to Monitor Generative Artificial Intelligence*, 92 TENN. L. REV. 239 (2024); Pierluigi Matera, *From Red Flags to Black Boxes: Corporate Oversight in the Age of AI*, 100 ST. JOHN’S L. REV. (forthcoming 2026), at p. 156, <https://ssrn.com/abstract=6161886>.

regulatory frameworks, codes and standards, and industry practice are beginning to supply tentative answers. What is largely absent, however, is specific judicial guidance on directors' and officers' AI-related fiduciary duties. The internal dimension of AI accountability remains, for now, an unsettled field.

This Chapter argues that the two sides of the AI accountability question are connected. The body of external liability law that courts are developing in response to AI-related harms to third parties is not merely an external matter. It already informs and represents a valuable source for shaping the duties that directors and officers owe internally. By examining how corporate liability on the outside may inform AI-related duties of directors and managers on the inside, this Chapter seeks to contribute to the debate on corporate and fiduciary liability relating to AI. Understanding both dimensions, and the relationship between them, helps develop a complete account of corporate AI accountability.

The Chapter proceeds as follows. Part II examines corporate accountability for AI-related harms to third parties, analyzing how existing doctrines of liability and attribution apply to, and in part are strained by, AI. Based on case law on AI and algorithmic harms, it suggests that despite several challenges, courts are generally still able to address these harms based on existing legal tools.⁵ Part III turns to the internal dimension, discussing the duties of boards and managers with respect to their corporation's use of AI, including governance, oversight, and the boundaries of appropriate reliance. Existing fiduciary duties are not changed dramatically but rather appear flexible enough to adapt to AI. However, this Part will argue that internal duties, as they are currently still without contours, are usefully informed by the more developed case law on corporations' external liability. The final Part concludes. Looking ahead, the conclusion will suggest that AI may put us on a broader trajectory toward a mostly depersonalized, systems-focused approach to corporate liability.

II. OUTSIDE THE CORPORATION: LIABILITY FOR AI-RELATED HARMS

A. Attribution Strains

Reported instances of alleged AI-related harms and litigation are increasing in frequency and visibility. They span a wide spectrum and include: chatbots

⁵ This Part is based on Martin Petrin, *When AI Hurts: Corporate Responsibility for Agentic AI*, HARV. J.L. & TECH. (forthcoming, 2027), <https://ssrn.com/abstract=6814644>.

linked to misleading information,⁶ defamatory statements,⁷ murder,⁸ suicides,⁹ and delusions;¹⁰ social media algorithms that cause mental health problems and educational disruptions;¹¹ autonomous vehicles involved in severe accidents;¹² and algorithmic tools implicated in privacy violations and discriminatory outcomes.¹³ As AI will further permeate business and society, the incidence of these and other harms is only set to increase. This raises the issue of accountability of corporations that develop and deploy AI, as AI harms can strain and even cause fractures in traditional legal tools and mechanisms.¹⁴

Accountability hinges on an important question: is the law equipped to hold corporations – the primary developers, deployers, and beneficiaries of AI –

⁶ Shannon Bond, *ChatGPT Promised to Help Her Find Her Soulmate. Then It Betrayed Her*, NPR (Feb. 14, 2026), <https://www.npr.org/2026/02/14/nx-s1-5711441/ai-chatgpt-openai-love-betrayal-delusion-chatbot>.

⁷ Isaiah Porter, *OpenAI Hit with First Defamation Suit over ChatGPT Hallucination*, BLOOMBERG L. (June 7, 2023), <https://news.bloomberglaw.com/tech-and-telecom-law/openai-hit-with-first-defamation-suit-over-chatgpt-hallucination>.

⁸ Abené Clayton, *Family of Man Killed in Shooting at Florida State University to Sue ChatGPT and OpenAI*, GUARDIAN (Apr. 8, 2026), <https://www.theguardian.com/us-news/2026/apr/08/florida-state-university-shooting-robert-morales-family-sue-chatgpt-openai>.

⁹ Rob Kuznia et al., *Parents of Texas A&M Student Say ChatGPT Encouraged Son to Kill Himself*, CNN (Nov. 20, 2025), <https://www.cnn.com/2025/11/06/us/openai-chatgpt-suicide-lawsuit-invs-vis>.

¹⁰ Will Steakin, *Lawsuit Alleges ChatGPT Convinced User He Could 'Bend Time,' Leading to Psychosis*, ABC NEWS (Nov. 7, 2025), <https://abcnews.go.com/US/lawsuit-alleges-chatgpt-convinced-user-bend-time-leading/story?id=127262203>.

¹¹ Kaitlyn Huamani & Barbara Ortutay, *Landmark Trial Accusing Social Media Companies of Addicting Children to Their Platforms Begins*, AP NEWS (Feb. 9, 2026), <https://apnews.com/article/meta-instagram-youtube-social-media-addiction-los-angeles-1b409b31438e5ba46e2e8c064229b51a>.

¹² Lily Jamail, *Tesla found partly to blame for fatal Autopilot crash*, BBC (Aug. 1, 2025), <https://www.bbc.com/news/articles/c93dqpkw4xo>.

¹³ Lauren Weber, *Millions of Résumés Never Make It Past the Bots. One Man Is Trying to Find Out Why*, WALL ST. J. (June 22, 2025), <https://www.wsj.com/lifestyle/careers/ai-resume-screening-hiring-676a4701>.

¹⁴ Accountability and attribution problems are arguably most acute in extra-contractual claims, which are the focus of this section. Nevertheless, contractual disclaimers and waivers are also relevant in this regard and may further complicate the picture.

accountable for harms involving advanced AI? Existing law remains applicable, but its application to AI with autonomous and opaque attributes becomes more difficult. A fundamental difficulty is that even if humans could have influenced AI actions or outputs, they may not have understood or foreseen them given the complexity and opaqueness of AI, which make it challenging to establish concepts such as breaches of duty, product defects, foreseeability, negligence, and intent.¹⁵ This can result in gaps affecting corporate liability.

Corporate liability, the focus of this Chapter, is still largely predicated on human acts, knowledge, and states of mind. Traditionally, extracontractual liability of corporate entities – apart from instances of strict liability – is based on human wrongs that are attributed to the corporation. In jurisdictions that fully adhere to the organic theory, such as Canada and the UK, this is the only mechanism for corporate liability: wrongs by corporate officials or bodies that qualify as directing minds may lead to the entity’s direct liability, whereas wrongs by individuals further down the hierarchy may trigger the corporation’s vicarious liability.¹⁶ AI challenges this traditional approach to corporate liability that depends on and derives from individual wrongs. As AI autonomy and complexity increase, and human foresight and involvement in AI-led processes decrease, the immediate cause of harms may become detached from discrete human acts or omissions. Frameworks for attributing corporate liability based on human fault will therefore struggle to accommodate the emerging AI-driven world. If it is impossible to establish human wrongs, corporate liability fails.

A more suitable approach is represented by depersonalized, direct liability of corporations. Mechanisms of this kind are in part recognized in US law, where courts have developed approaches that could support a modern system for attributing AI-related harms to legal entities. For instance, US courts have recognized ‘collective scienter’ and similar concepts that sanction corporations for harms not attributable to individual misconduct, but which materialize due to a multitude of actions or aggregated states of mind of multiple corporate agents. These aggregates constitute the entity’s own actions or state of mind.¹⁷ Applied to AI-related harms, the focus in terms of corporate liability would then

¹⁵ Even strict product liability includes elements of foreseeability in assessing defects. *See, e.g.*, RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY, § 2 (AM. L. INST. 2010).

¹⁶ The doctrine originates in the English House of Lords decision in *Lennard’s Carrying Co Ltd v. Asiatic Petroleum Co Ltd* [1915] AC 705 (HL).

¹⁷ *See, e.g.*, *Gutter v. E.I. Dupont De Nemours*, 124 F. Supp. 2d 1291, 1309 (S.D., Fla. 2000); *Romo v. Ford Motor Co.*, 122 Cal. Rptr. 2d 139, 158 (Cal. Ct. App. 2002).

lie on whether an enterprise as a whole, rather than individuals acting for it, failed to meet objective standards of care, thereby causing harm to third parties.

B. Potential Solutions

The apparent difficulties with liability for AI have led scholars and policymakers to debate potential solutions. These include: (1) treating AI as a ‘true’ legal agent in the sense of agency law; (2) providing AI with personhood; (3) AI-focused strict liability regimes; and (4) various legal reform proposals, from targeted new statutory offences¹⁸ to adjustments in existing laws or the creation of dedicated AI regulation.¹⁹ The latter approaches (reform of existing laws to incorporate AI-specific concerns and entire pieces of novel AI legislation) have in some jurisdictions already begun to materialize. The former three remain theoretical thus far, awaiting judicial or legislative/regulatory action.

Treating AI as an agent would allow its actions to be attributed to a corporate principal through direct or vicarious liability. Depending on the degree of decision-making authority, an AI system could be conceptualized as an organ (or directing mind, managing agent) of a corporate entity, enabling direct attribution of its conduct, or as a subordinate akin to an employee, triggering vicarious liability.²⁰ This would be unlike under existing law, which generally requires that corporate organs must be human officials or collective corporate bodies (such as the board of directors or the shareholders in general assembly), and which reserves the capacity to act as an agent for purposes of vicarious liability to humans and legal entities.²¹ The law recognizes that a computer

¹⁸ See, e.g., Peter Wills & Noam Kolt, *Lawless Agents* (manuscript on file with author), at 25; Ryan Abbott & Alex Sarch, *Punishing Artificial Intelligence: Legal Fiction or Science Fiction*, U. CAL. DAVIS L. REV. 323, 378–83 (2019).

¹⁹ The European Union is a leader in this area, as seen in its Artificial Intelligence Act (Regulation (EU) 2024/1689) and reforms to the Product Liability Directive. In the US, the proposed AI Lead Act, S. 2937, 119th Cong. (2025), contains liability-related provisions.

²⁰ For details of a proposed model, see for example Mihailis E. Diamantis, *Employed Algorithms: A Labor Model of Corporate Liability for AI*, 72 DUKE L.J. 797 (2023).

²¹ See Phillip Morgan, *Tort Law and AI: Vicarious Liability*, in THE CAMBRIDGE HANDBOOK OF PRIVATE LAW AND ARTIFICIAL INTELLIGENCE 135, 140–41 (Ernest Lim & Phillip Morgan eds., 2024); RESTATEMENT (THIRD) OF AGENCY § 7.07(2) (AM. L. INST. 2006), §§ 1.01, 1.04 & 3.05. Another question is whether AI could give rise to apparent

program can be an instrumentality through which a party acts, which could apply to AI,²² although the concept may be stretched by advanced forms of AI whose actions are dynamic and challenging to foresee. Courts or legislatures could decide to analogize AI to existing categories of legal agents, although no inclinations in this direction are currently visible. Even if AI agency were recognized, difficulties would arise in establishing that an AI agent satisfied the required elements of a wrong and that it acted within the scope of its assigned tasks or the ‘employment’ relationship with the principal.²³

In practice, the case for AI agency rests on the existence of genuine accountability gaps, that is situations where harm is caused by AI but cannot be attributed to any human or corporate actor. Such gaps are possible but likely rare. Harm can generally be traced to corporate failures in areas such as design, training, testing, disclosure, warning, selection, deployment, and supervision.²⁴ Accountability will often be linked to and rest with the developers, deployers, or manufacturers of AI systems. Two narrow residual gaps may nonetheless justify consideration of AI agency: cases where actors behind or connected to AI exercised reasonable care yet unforeseeable harms still materialized, and cases where an offence requires specific intent or knowledge that human or corporate actors behind the AI lack.²⁵ Outside these narrow circumstances, existing corporate liability tools – for the time being at least – appear largely sufficient.

agency. This Chapter expresses some skepticism on this given the lack of precedents on agent status for non-persons and difficulties to establish reasonable third-party reliance.

²² On this, see RESTATEMENT (THIRD) OF AGENCY § 1.04 cmt. e (AM. L. INST. 2006); Daniel Seng & Tan Cheng Han, *Agency Law and AI*, in THE CAMBRIDGE HANDBOOK OF PRIVATE LAW AND ARTIFICIAL INTELLIGENCE 250, 259 (Ernest Lim & Phillip Morgan eds., 2024).

²³ Daniel Seng & Tan Cheng Han, *Agency Law and AI*, in THE CAMBRIDGE HANDBOOK OF PRIVATE LAW AND ARTIFICIAL INTELLIGENCE 250, 259 (Ernest Lim & Phillip Morgan eds., 2024); David C. Vladeck, *Machines without Principals: Liability Rules and Artificial Intelligence*, 89 WASH. L. REV. 117, 132 (2014); Christopher M. Bruner, *Managing Fraud Risk in the Age of AI*, in FRAUD AND RISK IN COMMERCIAL LAW 33, 49 (Paul S. Davies & Hans Tjio, eds., 2024).

²⁴ See, e.g., Eric Tjong Tjin Tai, *Liability for AI Decision-Making*, in THE CAMBRIDGE HANDBOOK OF ARTIFICIAL INTELLIGENCE: GLOBAL PERSPECTIVES ON LAW AND ETHICS 116, 121–22 (Larry A. DiMatteo et al. eds, 2022).

²⁵ See Christopher M. Bruner, *Managing Fraud Risk in the Age of AI*, in FRAUD AND RISK IN COMMERCIAL LAW 33, 44–47 (Paul S. Davies & Hans Tjio, eds., 2024); Peter Wills & Noam Kolt, *Lawless Agents* (manuscript on file with author), at 21; Ryan Abbott & Alex Sarch, *Punishing Artificial Intelligence: Legal Fiction or Science Fiction*, U. CAL. DAVIS L.

As a solution to closing emerging gaps, agency is preferable to granting AI legal personality, even though the latter appears attractive to commentators that argue that it would address attribution difficulties and improve recourse for plaintiffs by enabling them to sue AI in its own capacity.²⁶ Legally, granting AI personhood appears feasible. By legislative act, new categories of legal persons can be created, and rights and obligations attached to personhood can be tailored. Yet the challenges and questions associated with AI personhood are substantial and include how to define rights and obligations of AI, its standard of care, and its state of mind; how to enforce and apply sanctions; and whether AI personhood would weaken deterrence by providing a shield for human and corporate actors to avoid accountability. Crucially, it is also unclear how AI personhood would meaningfully improve the ability of claimants or authorities to reach AI-controlled assets, which looks already achievable under the current system through court orders and enforcement mechanisms. While all these issues could be resolved, it seems that unless there are clear and substantial benefits in creating AI personhood, it is a difficult solution best to be avoided.

Strict liability, as another potential measure, has gained renewed scholarly attention with the rise of AI,²⁷ echoing decades-old debates around efforts to hold corporations to account independent of fault or misconduct. The appeal is threefold: strict liability sidesteps the difficulties of corporate attribution, is

REV. 323, 373–74 (2019). An additional requirement for a true gap would be that victims in these latter instances cannot rely on alternative negligence-based theories to bring claims.

²⁶ See, e.g., Anat Lior, *AI Entities as AI Agents: Artificial Intelligence Liability and the AI Respondeat Superior Analogy*, 46 MITCHELL HAMLINE L. R. 1044, 1069–70 (2020); Mark Fenwick & Stefan Wrba, *AI and Legal Personhood*, in THE CAMBRIDGE HANDBOOK OF ARTIFICIAL INTELLIGENCE: GLOBAL PERSPECTIVES ON LAW AND ETHICS 288, 303 (Larry A. DiMatteo et al. eds, 2022).

²⁷ See, e.g., Leo E. Strine, Jr., *Using Experience Smartly to Ensure a Better Future: How the Hard-Earned Lessons of History Should Shape the External and Internal Governance of Corporate Use of Artificial Intelligence*, J. OF CORP. L. 1265, 1269 (2025); Guido Noto La Diega & Leonardo C. T. Bezerra, *Can There Be Responsible AI Without AI Liability? Incentivizing Generative AI Safety Through Ex-Post Tort Liability Under the EU AI Liability Directive*, 32 INTERNATIONAL J. OF L. AND INF. TECH. 1, 20 (2024); Christiane Wendehorst, *Liability for Artificial Intelligence: The Need to Address Both Safety Risks and Fundamental Rights Risks*, in THE CAMBRIDGE HANDBOOK OF RESPONSIBLE ARTIFICIAL INTELLIGENCE INTERDISCIPLINARY PERSPECTIVES 187, 205–06 (Silja Voenekey et al., eds., 2022); Renee Henson, *“I Am Become Death, The Destroyer Of Worlds”:* *Applying Strict Liability To Artificial Intelligence As An Abnormally Dangerous Activity*, 96 TEMP. L. REV 349, 363–364 (2024).

independent of individual conduct, and eases the evidentiary burden on victims. But universal strict liability for AI is difficult to justify. AI is not inherently dangerous as its risks vary significantly by application and context. A general strict liability regime is not suited to this diversity, although instances of narrow and application-specific strict liability may be appropriate. In general, analyses of strict liability systems for corporate-induced harms have cast doubt on whether these approaches would achieve their efficiency and fairness goals,²⁸ which suggests that the same may be the case if they were applied to AI harms.

What emerges as the most promising approach to legal accountability for AI harms is to cast the net wide. Following traditional approaches to responsibility for injuries caused by machines, the focus should be on the unlawful behavior of a connected entity, such as a creator or owner. The question is which actors, beyond AI itself or its immediate users, should be held responsible for AI harms. Key candidates in this respect include the businesses that develop, deploy, or ‘manufacture’ AI systems. That is currently also the approach favored by courts.

C. Emerging Case Law

Emerging case law on liability for algorithmic and AI-related harms offers early guidance on how courts are approaching accountability. A consistent thread is that courts do not ask whether AI actions were wrongful in themselves, meaning that questions of AI agency or personhood are not engaged. Instead, they focus on organizational conduct, including the design and features of an AI system, control over it, risk management, and the terms of any delegation of decision-making. The cases can usefully be grouped, for present purposes, under three functional lenses: AI as an information interface, AI as a risk-creating system, and AI as a delegated decision-maker.²⁹ Each group tests existing liability frameworks in a different way, yet across all three, the following brief overview suggests that courts have found those frameworks broadly adequate.

Where AI systems function as *information interfaces*, courts have held businesses responsible for incorrect or misleading outputs generated by their AI tools, treating those outputs as originating from the deploying organization

²⁸ See BARNALI CHOUDHURY & MARTIN PETRIN, CORPORATE DUTIES TO THE PUBLIC, 158–60 (2019).

²⁹ This excludes privacy and intellectual property law cases. For a comprehensive overview of cases, see the George Washington University Ethical Tech Initiative’s *Database of AI Litigation*, available at <https://blogs.gwu.edu/law-eti/ai-litigation-database>.

rather than from the AI itself. At the same time, courts have declined to impose strict liability on developers simply for releasing systems known to be capable of error, emphasizing instead the role of warnings, disclaimers, and the standard of care taken to reduce harmful outputs. Practical examples in this category include cases dealing with alleged misrepresentation and defamation, although other claims based on incorrect or misleading information may well arise. For instance, a British Columbia tribunal found that Air Canada was responsible for incorrect information provided by a chatbot integrated in its website,³⁰ while a US court granted summary judgment in favor of OpenAI in a case that sought to hold it liable for allegedly defamatory statements generated by ChatGPT.³¹ Both cases have in common that courts treated the AI's outputs as those of its developers or deployers, focusing on these parties – not the AI's – specific actions or omissions in assessing potential responsibility.

In the *risk-creation* category, courts have found that deploying an AI system can give rise to a duty of care toward those who may be harmed by it. Courts have relied on tools such as common law negligence, products liability, and consumer protection laws for assessing responsibility across multi-party AI development chains. Prominent examples include both pending and decided AI chatbot and social media algorithm litigation, seen in both the United States and Canada, in which courts have found defendants liable or declined to dismiss claims that algorithmic design features and/or AI generated outputs caused physical, mental, or economic harms.³² For instance, a US court found that Alphabet, Google, and Character Technologies created a foreseeable risk of harm – and therefore owed a duty to take appropriate precautions – by releasing an AI chatbot that allegedly caused the plaintiffs' child to commit suicide.³³ Finally, products liability claims against autonomous vehicle developers have similarly been allowed to proceed where design flaws and causal connection to accidents and ensuing injuries were adequately pleaded.³⁴ These latter cases in

³⁰ *Moffatt v. Air Canada*, 2024 BCCRT 149 (Can.).

³¹ *Walters v. OpenAI*, 2025 Ga. Super. LEXIS 2747 (Ga. Super. Ct. May 2025).

³² See, e.g., *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157 (M.D. Fla., 2025); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 754 F. Supp. 3d 946 (N.D. Cal. 2024); *Toronto Dist. School Bd. v. Meta Platforms Inc.*, 2025 ONSC 1499 (Can.).

³³ *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157 (M.D. Fla., 2025). The case was settled but cases involving similar allegations remained pending at the time of writing.

³⁴ E.g., *Benavides v. Tesla, Inc.*, 804 F.Supp.3d 1242 (S.D. Fla. 2025).

particular underscore some of the evidentiary obstacles that plaintiffs may face in cases involving harms linked to complex and opaque algorithmic systems.³⁵

In the category of AI as a *delegated decision-maker*, an early case conditioned the permissibility of an algorithmic tool for judicial sentencing on it remaining advisory rather than determinative, requiring adequate safeguards and that human judgment must be retained as the ultimate arbiter.³⁶ A recent case has similarly indicated, albeit in dicta, that these ‘red lines’ apply to the use of AI by corporate managers.³⁷ Another recent decision appears to have moved beyond that framework, indicating that an AI developer or vendor may face liability vis-a-vis third parties on the basis that organizations using its tool delegated core functions – in this case hiring decisions – to an AI system.³⁸ Notably, the court did not object to AI functioning as a decision-maker per se – a stance which arguably may become inevitable with the rise of agentic or highly autonomous AI. The concern was with the process and outcomes the AI produced rather than the fact of delegation itself. However, this conclusion rested on a specific anti-discrimination statutory framework and may not extend beyond that context.

III. INSIDE THE CORPORATION: BOARD AND MANAGEMENT DUTIES

This Part turns from the corporation’s exposure to AI-related liability in relation to third parties to the internal consequences of that exposure for boards of directors and senior management. While judicial guidance on AI-specific aspects of fiduciary duties remains absent or severely limited, external liability risks associated with AI and its treatment by courts already place concrete demands on corporate leadership. This Part therefore examines directors’ and officers’ duties in light of AI, focusing in particular on how they can be understood and concretized in view of external corporate liabilities for AI harms.

³⁵ See *Jauregui v. Daimler Truck N. Am. LLC*, 2025 US Dist. LEXIS 54787 (D. Ariz. Mar. 2025).

³⁶ *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016).

³⁷ *Australian Securities and Investments Commission v Bekier* [2026] FCA 196 (further discussed in Part III below).

³⁸ *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796 (N.D. Cal. 2024).

A. Use of AI by Directors and Officers

Directors and officers (hereinafter referred to collectively as ‘managers’ and ‘management’) are increasingly relying on AI systems to inform their own decision-making, risk assessment, and compliance.³⁹ The use of AI by managers does not appear to be controversial, neither does AI change fiduciary duties.⁴⁰ However, the difficulty lies in drawing the line between acceptable use of AI and impermissible over-delegation or over-reliance on AI. Additionally, given the capabilities of AI, fiduciary duty liability may apply not only to use of AI that crosses acceptable boundaries, but also to the *non-use* or *insufficient use* of AI.⁴¹ As the technology becomes more sophisticated, managers that utilize AI will arguably perform better, at least in some areas, than their counterparts who do not, or not appropriately, leverage AI.

The use and non-use of AI implicates primarily the duty of care, although it can also be relevant in terms of the duty of loyalty, such as in cases of bad faith and self-dealing.⁴² In Delaware, the duty of care of directors and officers entails the obligation to inform themselves “prior to making a business decision, of all material information reasonably available to them.”⁴³ Similar requirements apply in Canada and the UK, with statutory provisions requiring directors and officers (Canada) or directors (UK) to use reasonable care, diligence and skill, which includes using appropriate information.⁴⁴ Acceptable standards of care evolve based on market expectations and commercial practice, which also means that individuals who fail to utilize AI that is accessible and has proven capabilities may fall short of their obligation to act with care and consider all

³⁹ See, e.g., Florian Möslin, *European Company Law in the Age of Digital Transformation: Artificial Intelligence, Data Economy, and Digital Corporate Governance*, 26 ERA FORUM 629, 630–32 (2025).

⁴⁰ This does not mean that fiduciary liability will not change, including in the manner mentioned in the Conclusion of this Chapter. In short, AI has the potential to marginalize, if not fully replace, personal contributions of managers in corporate decision-making.

⁴¹ See Douglas Sarro & Edward Waitzer, *Coming Disruptions in Corporate Law*, 71 CAN. BUS. L. J. (forthcoming 2026), pp. 10–15.

⁴² Additionally, under Delaware law, oversight duties are subsumed under loyalty. On oversight, see the discussion in section B below.

⁴³ *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985).

⁴⁴ Canada Business Corporations Act, s. 122(1)(b); UK Companies Act, s. 174.

information reasonably available.⁴⁵ Presumably, an expectation to use AI may begin to apply where its use has become commonplace and demonstrably leads to significantly improved outcomes and/or leads to tangible efficiencies. As one commentator has suggested, an area where this might likely become the case is risk management and compliance, given that AI use in these areas is already widespread and tends to be favourable based on cost-benefit considerations.⁴⁶

Just as the failure to use AI may be a breach of directors' and officers' duties, over-reliance on AI might lead to personal liability. The AI black box creates three issues for managers: (1) they may not know the specifics of an AI tool's design and underlying data; (2) they may not be certain whether the AI tool had accurate and complete information when reaching a decision, and whether the output itself is accurate; and (3) they may not be aware of the AI tool's reasoning, including alternatives that it may have considered.⁴⁷ Additionally, AI tools are not within the scope of corporate law provisions that allow directors to rely in good faith on information provided by certain professionals or experts.⁴⁸ This combination of factors may cause managers to fall below the required diligence when they use AI.⁴⁹ The business judgment rule, finally, will also not protect directors if reliance on AI is construed as a failure to be reasonably informed.⁵⁰

At the same time, some of the very issues that may render the use of AI impermissible or 'careless' – mainly its opaqueness and complexity, but also accuracy, safety, and confidentiality concerns – are inherent to many AI

⁴⁵ See Alfred R. Cowger Jr., *Corporate Fiduciary Duty in the Age of Algorithms*, 14 J. OF LAW, TECH. & INTERNET 159 (2022–2023); Geneviève Helleringer & Florian Möslin, *AI & the Business Judgment Rule: Heightened Information Duty*, U. CHI. L. REV. ONLINE *1 (2025); Katja Langenbucher, *Ownership and Trust – A Corporate Law Framework for Board Decision-Making in the Age of AI*, ECGI Working Paper (April 2025), <https://ssrn.com/abstract=4746241>.

⁴⁶ Christopher M. Bruner, *Artificially Intelligent Boards and the Future of Delaware Corporate Law*, 22 J. OF CORP. L. STUDIES 783, 802–804 (2022).

⁴⁷ Alfred R. Cowger Jr., *Corporate Fiduciary Duty in the Age of Algorithms*, 14 J. OF LAW, TECH. & INTERNET 159, 161, 181 (2022–2023).

⁴⁸ See, e.g., Delaware General Corporate Law, s. 141(e); Canada Business Corporations Act, s. 123(5).

⁴⁹ In the UK, section 173 of the Companies Act specifically requires directors to exercise independent judgement, which might be violated if boards rely too heavily on advice by AI.

⁵⁰ See Florian Möslin, *European Company Law in the Age of Digital Transformation: Artificial Intelligence, Data Economy, and Digital Corporate Governance*, 26 ERA FORUM 629, 632–33 (2025).

systems. This raises the question of how managers may safely and responsibly use AI. A central guiding principle is that, as with any other advice or information that they receive, managers may not passively accept AI outputs. Rather, they must critically examine it, including in light of their own knowledge and other relevant sources of information. Analogizing from requirements for directors' reliance on experts, it follows further that boards must: (1) use AI outputs in good faith; (2) ensure that a query is within the relevant AI tool's competence; and (3) select AI systems with reasonable care.⁵¹ Prudent boards will explore different types of AI models, including closed and custom-trained types,⁵² as well as be mindful of dependencies on AI providers.⁵³

In defining the boundaries of acceptable versus improper use of AI, we can look to case law discussed in the previous Part of this Chapter, in particular the category of AI as a delegated decision-making device. *State v. Loomis*,⁵⁴ a decision on algorithms in the judicial context, suggests that consideration of AI outputs for high-stakes decision-making is acceptable, but mechanical reliance is not. Additionally, *Loomis* provides that appropriate safeguards for preserving the integrity of decision-making are necessary, ensuring that the final decision is the result of human judgment. *Mobley v. Workday*⁵⁵ appears to be more permissive. The decision can be read as allowing even delegation of core functions to AI – in that case, the hiring of employees – as long as the outcomes are 'acceptable.' In *Mobley*, the use of the AI tool resulted in allegedly discriminatory outcomes, which would not pass muster. More broadly, it can be argued that AI-generated decisions must at a minimum lead to outcomes in line with applicable laws, although a more exacting test could incorporate elements such as regard for impacts on stakeholders and ethical considerations.⁵⁶

⁵¹ See Alfred R. Cowger Jr., *Corporate Fiduciary Duty in the Age of Algorithms*, 14 J. OF LAW, TECH. & INTERNET 159, 182–83 (2022–2023).

⁵² See the discussion of use cases and suggestions in AUSTRALIAN INSTITUTE OF COMPANY DIRECTORS, AI USE BY DIRECTORS AND BOARDS – EARLY INSIGHTS (December 2025), <https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-resources/ai-use-by-directors-and-boards.pdf>.

⁵³ On this issue, see Martin Petrin, *AI, New Technologies, and Corporate Governance: Three Phenomena*, 47 SEATTLE U. L. REV. 1639, 1679–83 (2024).

⁵⁴ 881 N.W.2d 749 (Wis. 2016).

⁵⁵ 740 F. Supp. 3d 796 (N.D. Cal. 2024).

⁵⁶ See generally Iris H.-Y. Chiu & Ernest Lim, *Managing Corporations' Risk in Adopting Artificial Intelligence: A Corporate Responsibility Paradigm*, 20 WASH. U. GLOBAL STUD. L. REV. 347 (2021).

Finally, in what might be the first decision commenting directly on the use of AI by corporate directors, the Federal Court of Australia has provided useful guidance in a case concerning managerial duties.⁵⁷ Citing an increasing use of AI as a “governance support tool” by boards, the court first observed a “shifting ... focus from how companies generally oversee AI in their organisations to how AI might assist the directors themselves in the discharge of their duties.”⁵⁸ It acknowledged the informal use of AI by individual directors as well as its use by management and company secretaries in the creation of board packs – which in turn might also be summarized and analyzed by directors with the help of AI.

The court went on to outline a cautious but flexible stance on AI. While generally open to the use of AI as a means for providing boards with information and directors to discharge their duties,⁵⁹ it emphasized “that the use of AI-generated summaries as a substitute for the careful reading and interrogation of board materials would warrant caution.”⁶⁰ The court stated that “ethical reasoning and judgment rests with directors, not machines” and that “[i]t is the responsibility of directors to ensure that this occurs in a responsible way,” keeping in mind also boards’ ability to control information that they receive.⁶¹

The importance of AI policies was further highlighted by the court. It remarked that “any use of AI should be controlled and transparent” and “boards should discuss and deliberately govern any AI use by formal adoption of policies, rather than just wink at informal ‘shadow’ use.”⁶² The court also referenced the important role of board chairs and company secretaries in this regard, including their roles in preserving boundaries between boards and management as well as in promoting proper director engagement through provision of information.

The court made clear that “directors cannot rely upon an inability to cope with the volume of information they receive” but suggested that “[a] way of addressing information overload, at least in part, could be through the principled and transparent use of emergent technology,”⁶³ by which it presumably meant AI. “The modalities of reading and examining material in

⁵⁷ *Australian Securities and Investments Commission v Bekier* [2026] FCA 196.

⁵⁸ *Id.* at para. 391.

⁵⁹ *Id.* at para. 1956, stating that there is nothing inherently objectionable in boards using AI assistance for navigating material provided by management.

⁶⁰ *Id.* at para. 393.

⁶¹ *Id.* at para. 394.

⁶² *Id.*

⁶³ *Id.* at paras. 395–96.

board papers might change,” the court stated, “but analysing and understanding information provided by management is a core function of a board.”⁶⁴ Therefore, to make informed and good faith decisions, directors need “to take a diligent and intelligent interest in the information available to them, understand that information, and apply an enquiring mind to their responsibilities.”⁶⁵ The court concluded that “[t]he use of technology may assist comprehension, but it cannot displace judgment.”⁶⁶ As in *Loomis*, the court returned to the role of human reasoning, stating that to properly discharge their statutory obligations, directors that use AI still need to exercise their own and informed judgement.⁶⁷

B. Decisions on, and Monitoring of, Corporate AI Use

In addition to their own use of AI, managers must decide whether, where, and how AI is deployed across their corporation’s activities. They are also in charge of monitoring corporate use of AI.⁶⁸ Again, while there are emerging practices and soft law on aspects of corporate use of AI,⁶⁹ there is no settled legal guidance on how fiduciary duties apply. This section examines AI development, deployment, and oversight against the background of the corporation’s exposure

⁶⁴ *Id.* at para. 396.

⁶⁵ *Id.* at para. 1945.

⁶⁶ *Id.* at para. 1956.

⁶⁷ *Id.*

⁶⁸ For in-depth discussions, see Matthew R. Gaske, *Corporate Officers’ Fiduciary Duty to Monitor Generative Artificial Intelligence*, 92 TENN. L. REV. 239 (2024); Pierluigi Matera, *From Red Flags to Black Boxes: Corporate Oversight in the Age of AI*, 100 ST. JOHN’S L. REV. (forthcoming 2026), <https://ssrn.com/abstract=6161886>; Steve Kourabas & Cheng-Yun Tsang, *The Board Monitoring Function: Artificial Intelligence in the Era of Heightened Accountability*, 13 CHINESE J. OF COMP. L. 1 (2025).

⁶⁹ See, for example, Government of Canada, *Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems* (2023); National Institute of Standards and Technology (NIST), *Artificial Intelligence Risk Management Framework (AI RMF 1.0)* (2023); ISO/IEC 42001:2023 Information technology — Artificial intelligence — Management System (2023); Monetary Authority of Singapore, *Principles to Promote Fairness, Ethics, Accountability and Transparency in the Use of Artificial Intelligence and Data Analytics in Singapore’s Financial Sector*. For a comparative overview, see also Jon Chun et al., *Comparative Global AI Regulation: Policy Perspectives from the EU, China, and the US* (2024), <https://arxiv.org/abs/2410.21279>.

to external liability, which is shaped directly by managers' actions and omissions. It argues that emerging cases regarding AI as information interfaces or risk-creating systems can assist in evaluating fiduciary duties in this field.

AI's tendency to generate incorrect outputs or 'hallucinate' is well known. Case law suggests that businesses may not disown accountability for erroneous outputs by AI or algorithmic systems.⁷⁰ It is therefore essential for management to prioritize minimizing such errors as courts will treat them as errors of organization, not an AI system itself. However, there is equally judicial recognition that some AI errors are inevitable, which directs the focus to risk mitigation in the form of disclosures, warnings, and disclaimers,⁷¹ which may also increasingly become mandatory or otherwise regulated. Notably, cases involving algorithmic harms linked to social media, chatbots, and autonomous vehicles illustrate that managers must from the outset consider and adequately address the potential for a broad range of economic, mental, and physical harm when developing, contributing to the development of, selling or distributing, and deploying AI tools and systems. This entails carefully evaluating technical reliability, safeguards, and stakeholder impacts. As in the case of their own use of AI, boards need to establish adequate AI policies within their organizations.

Once AI is in use, managers must engage in thorough oversight to ensure ongoing compliance and risk management. A complication is that the same foreseeability problems that may strain the external liability of corporations, discussed previously in this Chapter, also affect internal oversight: when AI harms are difficult to anticipate for managers, it becomes harder to establish that they were in breach of their duties. Conversely, AI also creates risks for managers. Although AI is capable of vastly improving risk management and monitoring, the downside is that AI's opaque and at times error-prone nature may also make it more difficult for management to identify and respond to warning signs before harm materializes, contrary to their duties.⁷²

Delaware corporate law provides a well-developed framework for oversight, but its application to AI and related difficulties has not yet been tested. The

⁷⁰ See *Moffatt v. Air Canada*, 2024 BCCRT 149 (Can.), mentioned above.

⁷¹ See Part II.C. above.

⁷² Pierluigi Matera, *From Red Flags to Black Boxes: Corporate Oversight in the Age of AI*, 100 ST. JOHN'S L. REV. (forthcoming 2026), at p. 35, <https://ssrn.com/abstract=6161886>.

basic principles are well established: *Caremark*,⁷³ as refined by *Stone v. Ritter*⁷⁴ and subsequent case law, demands that directors and officers implement and maintain an appropriate internal control system. Although the hurdles for holding managers liable for undue oversight remain high, essentially insulating them as long as they did not “utterly” fail to implement controls or “consciously” failed to monitor them,⁷⁵ newer developments signal a potential tightening. *Marchand v. Barnhill*⁷⁶ and subsequent decisions have shown that Delaware is more open to oversight claims when they touch upon business risks that are central to a business or ‘mission critical.’ This expansion may sharpen oversight duties and facilitate claims relating to AI whose development or deployment goes to the heart of a corporation’s business or may be considered high-risk.⁷⁷

Case law on corporate AI liability underscores that oversight must not only address technical errors, but also concerns such as bias, discrimination, privacy,⁷⁸ and the full range of physical, mental, and economic harm referenced above. It also serves as an important warning for managers, revealing risks that may affect oversight duties. Shortly after a US jury found Meta and YouTube liable of having deliberately designed addictive online platforms that caused a plaintiff to develop body dysmorphia and self-harm, Harvard corporate law professor John Coates asked “[w]hat do the Meta and Alphabet boards of directors do with this fact?”⁷⁹ Referring to fundamental principles of Delaware’s oversight jurisprudence, he remarked that boards presented with red flags about harms their companies cause cannot simply turn away, consistent with their fiduciary duties. Indeed, Delaware law provides that when red flags are “waved in one’s face or displayed so that they are visible to the careful observer,” they cannot be ignored.⁸⁰ While AI induced harms that have not yet materialized

⁷³ *In re Caremark Int’l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996).

⁷⁴ 911 A.2d 362 (Del. 2006); *see also In re McDonald’s Corp. S’holder Derivative Litig.*, 289 A.3d 343 (Del. Ch. 2023) (including a discussion of officers’ oversight duties).

⁷⁵ *Stone v. Ritter*, 911 A.2d at 370.

⁷⁶ 212 A.3d 805 (Del. 2019).

⁷⁷ *See* Jeffrey Saviano et al., *The Caremark Rule and Board Level AI Risk Management*, Edmond & Lily Safra Center for Ethics Blog, <https://www.ethics.harvard.edu/blog/post-6-caremark-rule-and-board-level-ai-risk-management%C2%A0>.

⁷⁸ *See* Yijun (Jenny) Ge, *AI And Corporate Governance How May AI Assist the Board In Informed Decision-Making?*, 24 UC DAVIS BUS. L. J. 115, 126–30.

⁷⁹ Post available at: https://www.linkedin.com/posts/john-coates-505990b_now-that-a-jury-has-found-metadeliberately-activity-7444003530941681664-EqTl.

⁸⁰ *Wood v. Baum*, 953 A.2d 136, 143 (Del. 2008).

may be difficult to foresee, harms that are already the subject of (successful) litigation should put managers on notice; not taking the appropriate steps toward stopping and mitigating similar harms would become difficult to defend.

IV. CONCLUSION

The rise of AI in corporate settings is not merely an internal matter of process, efficiency, or information management. It is shaped by the corporation's liability to external parties. This Chapter has taken an "outside-in" perspective, arguing that corporations' exposure to external claims, risks, and harms informs the contours of directors' and officers' fiduciary duties. The courts' insistence that corporations cannot disclaim accountability for negative impacts linked to algorithms and AI – whether economic, mental, or physical – makes clear that management must anticipate and address the external consequences of both their own use of AI and their corporation's deployment of AI tools and services.

This external liability should act as a driver for internal governance, especially until more specific guidance on managerial AI-related decisions and oversight is established, which may take considerable time. Directors and officers cannot replace their own judgment with AI. They are also compelled to implement robust AI policies, not simply to optimize internal workflows or decision-making, but to ensure that the corporation is not exposed to avoidable risks vis-à-vis customers, users, or the broader public. Judicial recognition that certain AI-related errors are inevitable does not absolve corporations; rather, it mandates diligent risk mitigation, in line with more stringent oversight duties.

Today, individual judgment still reigns supreme with regard to AI and fiduciary duties. Case law suggests that technology must not substitute human minds and their judgment. But AI will become more capable and autonomous, up to a point where the wisdom of having a human 'decider' may well be questionable. The most appropriate way forward appears to lie in lessening personalized liability both outside and inside the corporation. On the outside, corporations have separate personality and should owe a duty to use AI safely independent of individual mistakes. On the inside, managers that work with AI should be seen as stewards that ensure that appropriate systems, processes, and internal controls are in place. AI will reinforce and accelerate the existing trajectory of an increasing focus on decision design and process integrity in

corporate governance.⁸¹ Going forward, these ‘meta’ responsibilities of managers, but much less so their personal contributions to decision-making, could be the basis for assessing fiduciary liability – that is, if managers’ personal liability will remain relevant in the age of AI-supported or AI-led management.

⁸¹ Douglas Sarro & Edward Waitzer, *Coming Disruptions in Corporate Law*, 71 CAN. BUS. L. J. (forthcoming 2026), p. 22.

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