AI Litigation Risks Are Expanding To Affiliated Cos.

By **Jason Ross, David Kerschner and Rachel Forman** (October 29, 2026)



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Litigation targeting artificial intelligence developers and platform operators is well underway.

Following the trajectory of social media litigation, California courts have coordinated multiple product liability cases involving ChatGPT into a single proceeding, In re: ChatGPT Product Liability Cases, in San Francisco County Superior Court.

Per a case management order entered Sept. 24, that litigation has moved into active discovery.

Plaintiffs are adapting design-defect, failure-to-warn and negligent-undertaking theories from social media, online gaming, tobacco and other mass tort contexts to AI systems.

These claims focus not only on the developer or operator, but on who designed, validated, monitored or profited from the features alleged to have caused harm. And the potential defendant pool has expanded beyond primary developers and operators.

In March, the Public Health Advocacy Institute, a nonprofit organization known for tobacco litigation, sued DraftKings Inc. and FanDuel Inc., and also named the National Football League and Genius Sports Ltd. as defendants, in Sage v. DraftKings in the Court of Common Pleas of Philadelphia County.[1]

The NFL's alleged connection was commercial: its equity stake in Genius Sports, which licenses official game data to the betting platforms. Although this case does not involve an AI product, it is instructive because it illustrates how plaintiffs are extending product liability theories involving digital platforms beyond the companies that designed and operated the consumer-facing product.

The plaintiffs allege that DraftKings and FanDuel designed online betting platforms with addictive features, while also seeking to hold upstream parties such as Genius Sports and the NFL liable based on their data and their commercial and financial relationships with those platforms.

That same effort to reach beyond the operator of the consumer-facing product has begun to appear in AI litigation, where investors, technology providers, commercial partners and service providers may face claims even though they did not build or operate the system at issue.

For companies across the AI ecosystem, that means contracts, compensation structures, public statements and cross-company communications created today may later be used to establish what the company knew, what role it assumed and whether it profited from the allegedly harmful conduct.

This article examines those emerging theories of liability and the principal steps companies can take now to better position themselves before litigation arises.

The Expanding Defendant Pool

The potential defendant pool extends beyond developers and operators to companies whose connection to a consumer-facing AI platform may be commercial, technical or advisory.

Three categories are particularly worth watching: upstream data providers and licensors; investors and commercial partners; and service providers such as analytics, compliance, validation and safety vendors.

Upstream Data Providers and Licensors

Sage v. DraftKings is the clearest current example.[2] Genius Sports did not design the DraftKings or FanDuel apps or set their algorithms; it supplies data used by the betting platforms.

Yet the complaint filed against Genius Sports asserts design defect, negligence, failure to warn, aiding and abetting, unjust enrichment, and consumer protection claims on the theory that it profited from the data ecosystem enabling the allegedly addictive products.

Genius Sports' motion to dismiss remains pending.

Investors and Commercial Partners

The developing ChatGPT litigation provides an early example. Microsoft is named as a defendant in a small number of the coordinated cases, although threshold pleading issues concerning its alleged role remain unresolved, and discovery to date has proceeded against OpenAI rather than Microsoft.

The pleadings nonetheless illustrate how plaintiffs may seek to reach commercial partners that did not themselves operate the consumer-facing AI system.

Service Providers

No filed AI case yet squarely addresses an analytics, compliance or validation vendor.

But a company that provides services integral to a platform's operation, describes those services as producing safety or integrity outcomes, or participates financially in platform activity gives plaintiffs additional facts with which to argue that it was more than an ordinary vendor.[3]

How Plaintiffs Are Building Cases

Risk will vary significantly depending on a company's role in the AI ecosystem. But the emerging theories share a common feature: Plaintiffs will build them from the documentary record of the relationship.

This record can include contracts, communications, public statements, compensation arrangements and evidence bearing on knowledge, control and assumed responsibility.

Aiding and Abetting

In many jurisdictions, aiding and abetting requires actual knowledge of the primary party's tortious conduct and substantial assistance.[4] Constructive knowledge typically is not enough.

But knowledge may be proved circumstantially.[5] The documentary record of the relationship therefore matters.

Plaintiffs will look to emails, board materials, safety assessments and cross-company communications for evidence that the company knew of the relevant risk before the alleged harm. Because knowledge is often fact-dependent, these claims can be difficult to resolve at an early stage.

Product Liability

While the question of whether software, AI outputs or digital platforms qualify as products remains unsettled, plaintiffs are testing that characterization. The results have been mixed.

In Beyer v. DraftKings, the U.S. District Court for the Northern District of Illinois declined in November 2025 to hold categorically that a betting app was not a product.[6] In Macek v. DraftKings, the U.S. District Court for the Eastern District of Pennsylvania reached the opposite result in March.[7]

For companies that did not build or operate a platform, the more immediate question is whether plaintiffs can cast them as part of the product's design or distribution rather than as separate service providers.

Contracts and marketing are not dispositive, but descriptions of the company as a designer or supplier of a core component, or evidence that it provided input into design choices, can give plaintiffs meaningful allegations at the pleading stage.

Negligent Undertaking

Negligent undertaking asks whether a defendant voluntarily assumed responsibility for a protective function and performed it without reasonable care.

For investors making specific safety representations, validators issuing assessments, or vendors promising safety or integrity outcomes, this may offer plaintiffs a more direct theory than aiding and abetting.

But the inquiry is fact-specific. The undertaking must be meaningful and connected to the alleged harm, not merely routine services or aspirational statements.

What to Do Before a Complaint Is Filed

Documents created in an AI-related commercial relationship may later become exhibits in litigation, including contracts, scopes of work, compensation arrangements, public statements and cross-company communications.

Companies should evaluate the commercial relationship with an eye toward how that record would read in discovery and before a jury.

Defining the Role Precisely

Role definitions matter. Negligent undertaking claims are often analyzed under Restatement (Second) of Torts Section 324A, which addresses liability for undertaking services for another that are intended to protect third parties.

Courts applying that framework generally look for a meaningful undertaking or detrimental reliance, not merely aspirational statements.[8] Although no court has yet applied this theory against an AI third-party defendant, complaints already plead this theory against primary developers.[9]

Other participants in the AI ecosystem should expect plaintiffs to test the same theory where contracts or public materials appear to assign responsibility for a safety outcome.

Roles can be described in ways that create very different litigation records. Language suggesting that a provider is responsible for product integrity, safety or similar outcomes may give plaintiffs a basis to argue that the provider assumed a broader role in managing those risks.

Where that is not the parties' intent, agreements and public descriptions should define the provider's actual functions with precision, and make clear which party retains decision-making authority and responsibility for the platform and its users.

The objective is not formulaic disclaimer language, but an accurate description of the provider's role and the limits of its responsibility.

Compensation Structure

Compensation tied to platform activity can become part of plaintiffs' liability narrative. In Sage, plaintiffs pointed to the upstream economics to argue that parties that did not design or operate the betting apps nevertheless had a financial stake in platform activity and should be liable.

A vendor whose compensation increased with use, engagement or transaction volume should expect plaintiffs to characterize that arrangement as evidence of aligned incentives.

No particular pricing model creates liability, but companies should understand how compensation terms may later be characterized as evidence of motive, incentives or involvement.

Managing External Communications

Public statements can broaden a company's perceived role before discovery begins. Press releases, investor materials and websites that describe a company as ensuring safety, validating a system or designing a critical component may support broader liability theories even if the contract describes a narrower function.

Public descriptions should be consistent with the allocation of responsibility in the underlying agreement.

Managing Cross-Company Communications

Plaintiffs will use cross-company emails, reports, meeting notes and shared analyses to argue that the parties were more integrated than the contract suggests.

Documents showing shared awareness of risks, unresolved escalation or coordinated decision-making may support knowledge-based theories and help define the scope of an alleged undertaking.

The discovery sought in the emerging ChatGPT litigation illustrates the point. Plaintiffs proposed an electronically stored information protocol expressly covering model versions, system prompts, alignment and evaluation data, and conversation metadata.

This underscores how quickly technical and safety-related records created before suit can become central litigation evidence.

For companies elsewhere in the AI supply chain, the same principle applies to contracts, scopes of work, safety representations, escalation records, cross-company communications and materials reflecting who had authority to identify or address a risk.

Companies should ensure their communications accurately reflect the scope of their involvement, maintain clear escalation practices, and document their concerns, decisions and follow-up actions across company lines with the possibility of later discovery in mind.

Allocating Risk in the Contract

Agreements should also allocate the consequences if third-party claims arise. Depending on the relationship, that may include indemnification for user claims, appropriate treatment of liability caps, notice of material investigations, and rights to suspend or terminate services if the counterparty's conduct materially changes the risk.

These provisions may not defeat a tort claim by a nonparty, but they can determine who bears the cost and whether the company can exit a deteriorating relationship.

Building a Record You Can Explain

Companies facing litigation will need to explain not only what they decided, but why.

Contemporaneous documentation of important scope, safety and risk decisions can provide context when plaintiffs later isolate a difficult email or characterize a contracting choice as evidence of indifference.

A record that captures the reasoning behind a decision is easier for a company witness to defend than one reconstructed years later.

Conclusion

AI-related tort litigation is no longer only a developer problem. Plaintiffs are looking to companies that supply technology and data, invest in platforms, validate systems, provide services, and participate in their economics.

Whether those claims ultimately succeed remains uncertain, but the record on which they will be litigated is being created now.

Companies that define their roles carefully, align public statements with their contractual roles and document important decisions will be better positioned if those relationships later become the focus of litigation.

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[1] Sage et al. v. DraftKings Inc. et al., No. 260303384 (C.P. Philadelphia Cnty., filed March 24, 2026). Complaint and press release: https://phai.org/phai-files-landmark-lawsuit-against-draftkings-nfl-geniussports/.

[2] Id.

[3] For discussion of the applicable doctrinal framework, see infra Section II.

[4] Marion v. Bryn Mawr Trust Co. , 288 A.3d 76 (Pa. 2023): https://law.justia.com/cases/pennsylvania/supreme-court/2023/72-map-2021.html. Spinelli by Morris v. Fallon , 322 A.3d 956 (Pa. Super. 2024): https://www.pacourts.us/assets/opinions/Superior/out/J-A14040-24o%20-%20106045934278451345.pdf. Thornwood Inc. v. Jenner & Block , 344 Ill. App. 3d 15, 799 N.E.2d 756 (1st Dist. 2003): https://www.illinoiscourts.gov/Resources/f739466d-54f8-4d46-8357-74338512cefd/1011767.htm.

[5] Marion, 287 A.3d at 888: https://law.justia.com/cases/pennsylvania/supreme-court/2023/72-map-2021.html.

[6] Beyer v. DraftKings Inc. , No. 1:25-cv-01336, 2025 WL 3281680 (N.D. Ill. Nov. 25, 2025): https://business.cch.com/ald/BeyervDraftKingsInc1222025.pdf.

[7] Macek v. DraftKings Inc. , No. 5:25-cv-01995 (E.D. Pa. March 23, 2026). Docket: https://www.courtlistener.com/docket/70807217/parties/macek-v-draftkings-inc/. Coverage: https://www.legalnewsline.com/pennsylvania-record/pennsylvania-record/draftkings-has-no-duty-to-protect-addicts-court-rules/article_87fc4dc5-6b93-4f44-9d42-2eeb2d2e5994.html.

[8] Bell v. Hutsell , 2011 IL 110724, 955 N.E.2d 1099 (Ill. 2011): https://caselaw.findlaw.com/court/il-supreme-court/1594239.html.

[9] Raine v. OpenAI Inc., No. CGC-25-628528 (Cal. Super. Ct., filed Aug. 26, 2025); Brooks v. OpenAI Inc., No. 25STCV32386 (L.A. Super. Ct., filed Nov. 6, 2025): https://techjusticelaw.org/cases/brooks-v-openai-inc-openai-holdings-llc-and-samuel-altman/.