

In The News

# Donnie M. King, Ryan Roman, and Cherly Lucien Explain How to Defeat Operational AI-Washing Claims Before Discovery in Part Four of Their Five-Part Law360 Series on AI-Driven Securities and Governance Risk

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Akerman Litigation Practice Group Partners Donnie M. King and Ryan Roman and Associate Cherly Lucien authored “Dismantling Operational AI-Washing Claims and Securing the Corporate Shield” for *Law360*, the fourth installment in a five-part series on AI-driven securities and governance risk.

Part One identified an emerging litigation risk: that the plaintiffs’ bar may seek to frame material corporate decisions, such as AI-driven workforce reductions and restructurings, as securities fraud.

Part Two showed companies the importance of properly aligning board records with AI disclosures.

Part Three demonstrated how disciplined disclosure drafting provides the next line of defense.

Part Four explains how defense counsel can defeat operational AI-washing claims before discovery begins. It demonstrates why ending the case before discovery begins is the most critical objective for defense counsel.

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Donnie, Ryan, and Cherly outline three core defense strategies: attacking scienter by contextualizing internal concerns as evidence of due diligence rather than fraud, severing loss causation by demonstrating that disclosed risks materialized, and thus, did not reveal new information, and casting aspirational AI statements as mere puffery. Critically, they show that the strongest defenses combine these litigation strategies with the governance and disclosure work completed before litigation begins, creating a comprehensive shield against operational AI-washing claims.

Part Five, published next Tuesday, will examine what boards owe under Delaware's *Caremark* duty of oversight as AI becomes an important aspect to corporate operations. The final installment in the series will be published on Tuesday, June 9, 2026.

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