September 9, 2026
By: Rachel A. Morgenstern, Esq.
Adam H. Russ, Esq.

RuskinMoscouFaltischek P.C.
Smart Counsel. Straight Talk.

Algorithmic Liability and the Emerging Insurance Coverage Gap

There is no question that artificial intelligence and algorithmic decision-making are transforming how businesses operate. But as adoption of AI tools accelerates, so too does the potential for legal exposure. Algorithmic liability refers to responsibility for harm caused by AI and software algorithms. The critical question for modern business owners is not simply whether AI creates risk (it does), but whether their existing insurance covers that risk. For many, the answer is unclear at best, and increasingly may be no.

What is Algorithmic Liability?

Algorithmic liability is about who can be held legally responsible when an algorithm or AI system causes harm. Put differently, it concerns the responsibilities owed by developers and businesses to the people affected by algorithmic decisions. AI tools can reinforce human bias, produce inaccurate results through hallucinations, infringe on intellectual property rights, or give rise to claims of defamation and fraud. The use of these tools in the workplace has naturally led to questions about employer liability.

Is This Covered by Insurance?

Most existing insurance policies were not drafted with AI in mind and do not clearly state whether AI-related claims are covered or excluded. When a loss occurs and the policy is silent on algorithmic liability, that ambiguity can quickly result in coverage litigation.

As a result, insurers are now setting boundaries, either by narrowing existing definitions or issuing endorsements that exclude AI-related risks altogether. In January 2026, the Insurance Services Office (“ISO”), which develops standard forms for the insurance industry, introduced explicit generative AI exclusion endorsements for commercial general liability insurance. ISO’s parent company, Verisk, issued the following summary of the newly proposed exclusions:

> Generative Artificial Intelligence Endorsement CG 40 47: This endorsement excludes coverage for bodily injury, property damage and personal and advertising injury arising out of generative artificial intelligence for the Commercial General Liability Coverage Part. It contains a definition of generative artificial intelligence.

Generative Artificial Intelligence (Coverage B Only) Endorsement CG 40 48: This endorsement excludes coverage for personal and advertising injury arising out of generative artificial intelligence for the Commercial General Liability Coverage Part. It contains a definition of generative artificial intelligence.

Generative Artificial Intelligence Endorsement CG 35 08: This endorsement excludes coverage for bodily injury and property damage arising out of generative artificial intelligence applicable to the Products/Completed Operations Coverage Part. It contains a definition of generative artificial intelligence.

The proposed ISO endorsements apply only to commercial general liability policies. Berkley Insurance Company, however, has taken a different approach. Its new exclusion, titled "Artificial Intelligence Exclusion (Absolute)," applies broadly to CGL, E&O, D&O, employment practices, and fiduciary liability policies.

The exclusion applies to losses arising out of, or attributable to, "any actual or alleged use, deployment, or development of Artificial Intelligence by any person or entity." It also provides a non-exhaustive list of examples, including the generation of content or communications using AI; an insured's failure to detect AI-generated content; an insured's inadequate training regarding AI; alleged representations or agreements made by a chatbot; and products used by an insured that incorporate AI.

What Types of Businesses Could This Affect?

The businesses with the greatest exposure are those using AI tools that are customer-facing, involved in hiring, or used to generate advice in the finance, healthcare, or legal services sectors. Financial services companies, for instance, face exposure from AI tools involved in loan approvals, credit scoring, and trading. Healthcare providers face malpractice liability from AI-based diagnostic and treatment tools. Employers using AI to assist with hiring may face discrimination claims under federal and state law. And perhaps most prominently, companies using AI-related tools to make consumer recommendations, set pricing, or interface with customers, such as chatbots, may face exposure if those tools produce misleading or harmful results.

Businesses with the following types of policies should be on the lookout for changes and should pay close attention when it comes time for renewal this year:

- Commercial General Liability policies may cover bodily injury or property damage where AI is involved;
- Cyber/Privacy Liability policies may cover AI-involved data breaches;
- Tech E&O/Professional Liability policies typically cover negligent acts, errors, or omissions in products/services, which may include instances involving AI;
- Directors & Officers policies may cover securities claims arising from AI-related misstatements; and
- Employment Practices Liability policies may respond to AI-driven hiring discrimination and employment claims.

How Should Businesses Address These Risks?

AI-related losses are not necessarily excluded merely because a policy is “silent” on AI. In fact, the existence of the above-cited endorsements suggests that some policies may already provide coverage for AI-related losses, albeit not expressly. Business owners should take a close look at existing policies to determine what language, if any, might cover AI-related losses. This is especially important when it comes time to renew policies this year or next. For a more proactive approach, business owners can investigate the availability of policies dedicated to AI coverage.

Businesses should also be aware that some jurisdictions have enacted laws regulating the use of AI or algorithmic tools in hiring and promotion decisions, including requirements such as bias audits, public disclosures, and advance notice to candidates or employees. New York City’s Local Law 144, for example, imposes specific audit and notice requirements.

For more information about algorithmic liability or for assistance with AI-related insurance coverage matters, please contact:

Rachel A. Morgenstern, Esq.
(516) 663-6537
rmorgenstern@rmfpc.com

Adam H. Russ, Esq.
(516) 663-6557
aruss@rmfpc.com