AI GOVERNANCE · INSURABILITY · CIVIL LIABILITY · LOSS ALLOCATION · VENDOR LIABILITY · NEGLIGENT MISREPRESENTATION · EU AI ACT · UNINSURABILITY

Selling Control Without a Backstop

AI Governance Frameworks, the Uninsurability of Artificial Intelligence, and the Vendor in the Civil Liability Chain

In late 2025 the major carriers filed to exclude AI liability from standard coverage; on January 1, 2026, the standard form made it standard. The governance market sells control over the same risk the insurers just refused to stand behind, and a vendor that promises that control may have volunteered for the civil chain.

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PART I

Two Markets, Opposite Conclusions

The governance market matured as the insurance market withdrew

ISO FORM CG 40 47 01 26 (EFF. JAN. 1, 2026) · AIG · GREAT AMERICAN · W.R. BERKLEY

The governance market matured. At the same moment, the insurance market reached the opposite conclusion.

Major carriers were not raising premiums. They were declining to write the risk at all, which is what insurers do when a loss is one they cannot model. An underwriter described generative AI output to the Financial Times as "too much of a black box."

What had been "silent" coverage, present because nothing excluded it, became an explicit and standard exclusion across the commercial baseline.

ISO CG 40 47, WHAT IS EXCLUDED

"Arising out of" generative artificial intelligence, bodily injury, property damage, personal and advertising injury under Coverage A and Coverage B.

The trigger phrase "arising out of" requires only a causal connection under settled insurance law, not proximate cause. ISO forms underlie approximately 82% of US property and casualty policies. The practical reach is the commercial baseline itself.

SOURCES ISO Form CG 40 47 01 26 (eff. Jan. 1, 2026) · AIG · Great American · W.R. Berkley

Insurance pools risks that are independent. One shared model makes them correlated.

A single model, a single provider, a single update sits behind thousands of deployers at once. A flaw is not one claim; it is every claim, at the same moment. That is uninsurable by construction, not by appetite.

HOW INSURANCE WORKS

Many independent risks, modeled across a pool. The losses do not all arrive together.

WHAT AI DOES TO IT

One update flaws the model everywhere at once. The pool's losses become a single correlated event.

SOURCES Section II.A · The carrier retreat, explained

EU AI ACT · ISO CG 40 47

THE REGULATORY CHAIN

Terminates at the deployer.

Regulatory enforcement, where it reaches at all, assigns obligations to the deployer. No statute reallocates the loss upstream to the developer or governance vendor.

THE CIVIL VACUUM

The loss lands on the deployer's balance sheet.

No insurer behind it. No statute reallocating it. The governance vendor inserted itself into that vacuum, through its own marketing, by holding out its framework as the thing that makes deployment safe and defensible.

> *The deployer is being sold control over a risk that its own insurer has just refused to stand behind.*

SOURCES EU AI Act · ISO CG 40 47

THE ARGUMENT IN THREE CLAIMS

1

Control cannot honestly be sold.

The system is stochastic in output, open in action space, and indifferent as to substrate. No framework can deliver the determinacy the sale implies.

2

The vendor volunteers for the chain.

Marketing the framework as the assurance the deployer relied on puts the vendor in a civil-liability position regulation never assigned, and an indemnity clause cannot fully cure.

3

The fifth question goes unasked.

The genre asks four familiar questions and never the fifth: has the buyer been told, in plain terms, that the risk is uninsured?

SOURCES The argument in three claims

The framework's value is its capacity to show that someone was reasonable. That is exactly what makes it a representation.

Carriers ask to see the AI usage policy and reward documented human-in-the-loop controls. A deployer facing a claim introduces its adherence as proof of due care; a regulator weighing a penalty reads the same file. The document is offered and consumed as evidence that control existed.

> *If the vendor authored and certified that representation and held it out as sufficient, the vendor has made a statement about a matter within its professed expertise, on which the buyer was meant to rely.*

SOURCES Section IV · The framework as an evidentiary artifact

THE IMPOSSIBILITY OF SOLD CONTROL

STOCHASTIC OUTPUT

No framework can promise determinacy a stochastic system cannot deliver.

The same input produces different outputs on different runs. A vendor who promises a specific output has promised what is architecturally unavailable.

OPEN ACTION SPACE

The system can take actions its operators have not anticipated.

An open action space cannot be fully bounded by a pre-deployment checklist. Control documentation is a record of what was tested, not a guarantee against what was not.

SUBSTRATE INDIFFERENCE

The model is indifferent as to whether its output harms or helps.

A framework can lower a rate through documented diligence. It cannot install values in a system that has none. The sale implies something architecturally unavailable.

SOURCES The impossibility of sold control

PART II

The Vendor in the Civil Chain

Marketing as the last solvent link, and the fifth question

§ 552, NEGLIGENT MISREPRESENTATION

One who, in a business in which it has a pecuniary interest, supplies false information for the guidance of others is liable to those who justifiably rely on it, where it failed to use reasonable care in obtaining or communicating it.

§ 324A · INDIAN TOWING, THE UNDERTAKING

Having undertaken to render a service it should recognize as necessary for another's protection, the vendor must use reasonable care, and is answerable where another reasonably relies on the undertaking.

THE LAST SOLVENT LINK

With the insurer gone and the developer shielded, the vendor that marketed the assurance may be the last party standing in the chain that the loss can reach.

SOURCES Section VI · Restatement (Second) of Torts §§ 552, 324A · Indian Towing Co. v. United States, 350 U.S. 61 (1955)

An indemnity clause moves loss between the two parties at the table. The injured third party was never at the table.

It binds only the signatories

Indemnity reallocates loss between vendor and deployer. The third party's claim is not theirs to bargain away.

It sounds in misrepresentation

The third party reaches the vendor in negligent misrepresentation, a tort, not in the contract the clause governs.

It is worth what the vendor can pay

An indemnity from a thinly capitalized vendor is a promise, not a backstop. The marketing made the reliance; the clause cannot un-make it.

SOURCES Section VI · The limits of the indemnity clause

The genre asks four questions and sells a feeling. The fifth question is the one it never asks.

1. What does the system do?
2. Who is accountable?
3. What controls are in place?
4. How are incidents handled?
5. *Has the buyer been told in plain terms that the risk is uninsured?*

The vendor who markets a framework as the assurance on which a deployer reasonably relied has undertaken to provide protection. Having undertaken to act, it must use due care, and is answerable where another reasonably relies on the undertaking. Indian Towing, 350 U.S. 61.

> *The genre's silence on the fifth question is not an oversight. It is the condition on which the sale depends.*

SOURCES The fifth question · Restatement (Second) of Torts § 552 · Indian Towing Co. v. United States, 350 U.S. 61 (1955)

CONCLUSION

A vendor that promises determinacy into a market it knows the carriers have exited has volunteered for a place in the civil chain that regulation does not assign it and that an indemnity clause cannot fully reclaim.

The buyer is not buying control over a model. The buyer is buying documentation of effort, which has value, and a representation of safety, which does not have the value implied, deployed into a space where the loss has nowhere to go but the buyer's own balance sheet.

This article's modest proposal: ask the fifth question out loud. The buyer and the affected public are owed it.

SOURCES Conclusion

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