# HUSCH BLACKWELL

## THOUGHT LEADERSHIP

**Service**

Artificial Intelligence

**Professionals**

**EMILY LOGAN STEDMAN**
MILWAUKEE:
414.978.5366
EMILY.STEDMAN@
HUSCHBLACKWELL.COM

**ERIK DULLEA**
DENVER:
303.749.7270
ERIK.DULLEA@
HUSCHBLACKWELL.COM

LEGAL UPDATES                    PUBLISHED: FEBRUARY 23, 2026

# *Heppner v. Claude*: The First Privilege Waiver by AI Ruling—What Lawyers and Clients Must Know

*Key Point: In a question of first impression, a federal judge's ruling that documents a client's prompts to a generative AI system—and documents generated by AI to share with counsel—are not protected by the attorney-client privilege or the work product doctrine.*

The Southern District of New York recently made history. In *United States v. Heppner*, Judge Rakoff held that a defendant's conversations with a **publicly available, non-enterprise**, generative AI platform, that were **not made at the request of counsel**, are **not** protected by attorney-client privilege or the work product doctrine. This is the first decision that addresses whether a client's "AI chats" are privileged. The answer, on these facts? No.

## Why?

Privilege is fragile. This isn't just a litigation issue. It also applies to preparing for or responding to regulatory audits or other investigations.

Feeding legal analysis, or correspondence with counsel or an expert, into an open AI system, potentially waives the attorney-client privilege, confidentiality, and trade secret protections.

AI platforms are not attorneys, nor are they confidential (even when consumers use a paid account). The platforms' terms of service allow for data review and third-party disclosure.

Communications with AI that are not prepared by or at the direction of counsel do not qualify as attorney work product.

Sharing privileged information with a generative AI system is equivalent to sharing it with any third party—privilege is waived.

**What Should Lawyers and Clients Do?**

**Update Your Intake:** Ask clients whether they've discussed their legal matter with any AI tool. Don't assume they haven't. Revisit this warning as the matter proceeds.

**Discovery and Depositions:** Add AI usage to your deposition questions and collect your client's AI chats. Listing the chats on a privilege log triggered the issue in Heppner. Expect such scrutiny going forward.

**Educate Clients:** Make it clear that using public AI tools to summarize a legal memo from counsel—or to process or brainstorm legal matters—can waive privilege, confidentiality, and trade secret protections.

**Train Your Teams:** Regulatory, compliance, and operations staff should be warned that running confidential or trade secret info through public AI is a privilege and confidentiality risk is waiting to happen.

**Stick to Enterprise Tools:** Company-approved, closed-universe AI tools are different, but review their terms and train users accordingly.

**The Bottom Line:** Judge Rakoff's ruling concludes by recognizing generative AI as a new technological frontier for the law to address, but still subject to the longstanding legal principles and rules of confidentiality and privilege. To read Judge Rakoff's decision in full, click here.

Want more like this? Subscribe to our Byte Back Blog for the latest developments in generative AI.

**Contact us**

If you have questions regarding this decision or how other generative AI developments could impact your business, contact Erik Dullea, Emily Stedman, or your Husch Blackwell attorney.