

The Texas Business Court Wades into “Are Prompts Discoverable” Pool

Tate Group Automotive, LLC v. Legacy Automotive Capital, LLC, et al.

Cause No. 25-BC11B-0020

BY Sean Lemoine and Kristi Edwards

On June 3, 2026, Judge Grant Dorfman of the Texas Business Court, Eleventh Division, issued a minute entry in *Tate Group Automotive, LLC v. Legacy Automotive Capital, LLC*, joining a number of courts grappling with whether discussions with generative artificial intelligence (“GAI”) are protectible. As Judge Dorfman noted:

“The issue presented is a novel one, as evidenced by the fact that all case law authorities cited by the parties date from 2026. Indeed, one of them refers to its ruling as “a questions of first impression nationwide.”¹

Relying on the reasoning in *Warner* and *Morgan*, and applying the plain language of, Tex. R. Civ. P. 192.5(a)(1), the Court determined that a party’s conversations with a GAI tool such as ChatGPT may be shielded from discovery as attorney work product that is “material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party.”

The Court identified the potential for waiver in using GAI and ordered the disclosure of what “discovery materials or products” were loaded into ChatGPT, with a focus of whether there were violations of the Court’s protective order. This is based on the concern that the use of ChatGPT in an open environment (meaning disclosure to ChatGPT with no restrictions on usage as opposed to a closed environment (that exists in ChatGPT Enterprise and maintains the confidentiality of the information) could violate certain non-disclosure obligations imposed by the Court.

TWO QUICK TAKEAWAYS FOR IN-HOUSE COUNSEL AND EXECUTIVES

1. Have protocols in place for GAI use when your company enters into the anticipation of litigation stage.
2. Implement GAI Use policies concerning what information disclosed in litigation can be used, and under what circumstances.

As opinions seem to come out monthly, we expect the issues of the discoverability of prompts to come into sharper focus as courts around the country grapple with all the different permutations that will get litigated.²

¹ Judge Dorfman cited *Warner v. Gilbarco, Inc.*, 2026 WL 373043, at *4 (E.D. Mich. Feb. 10, 2026) *Morgan v. V2X, Inc.*, 2026 WL 864223, at *3-5 (March 30, 2026), and *United States v. Heppner*, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026) in his analysis. Discovery of attorney prompts (not at issue in the *Tate Group* opinion) have been extended protection in earlier opinions. See *Tremblay v. OpenAI, Inc.*, No. 23-cv-03223, 2024 WL 3748003 (N.D. Cal. Aug 8, 2024) (attorney prompts are protected); *Concord Music Group, Inc. V. Anthropic PBC*, No 24-cv-03811, 2025 WL 1482734, at *3-4 (N.D. Cal. May 23, 2025) (same).

² See *Conservation Law Foundation v. Shell Oil Co*, PACER at ECF No. 970, D. Conn. May 18, 2026 (Magistrate ordering production of expert reports – currently stayed pending district court review).

ABOUT WICK PHILLIPS

Wick Phillips is a full-service business law firm serving clients across Texas and the United States. Founded in 2004, the firm has grown to over 110 attorneys, specializing in all areas of business law—complex commercial litigation and appeals, corporate transactions, labor and employment, real estate, intellectual property, bankruptcy, insurance coverage, tax, and securities—with offices in Dallas, Fort Worth, and Austin.