

EAGLE INTERNATIONAL ASSOCIATES

Presents



**A BROTHERLY SHOVE MIGHT SCORE YOU
SIX, BUT A MIGHTY MISTAKE COULD COST
YOU MORE THAN SIX FIGURES**

October 9, 2025

**W Philadelphia Hotel
Philadelphia, Pennsylvania**

EAGLE INTERNATIONAL ASSOCIATES

MISSION STATEMENT

Eagle International Associates is an international network of independent law firms, adjusters and claims related service providers throughout the United States and Canada. Eagle members are dedicated to providing insurance companies and self-insureds with the highest quality legal and adjusting services for competitive and fair compensation. As members, we are committed to the highest ethical standards and act with professionalism and civility in all our endeavors. Eagle members exceed their clients' expectations for quality and service. At every opportunity, we promote the use of Eagle and its members and refer existing relationships through active participation in Eagle's meetings, programs and seminars.

DIVERSITY POLICY

Eagle International Associates, Inc. is of the strong belief that our organization is stronger, more valuable, and more effective through the inclusion of adjusters and attorneys of diverse gender, sexual orientation, racial, ethnic, cultural backgrounds, and all religious or non-religious affiliations. Eagle recognizes that the inclusion of such diversity is vital in order to achieve excellence and to serve its clientele effectively. Eagle is committed to a further understanding of its cultural filters and the absolute need to accept each person as a valued, talented, unique individual, which, when working with other Eagle members, will bring the organization and all its members genuine benefits and competitive advantage in the marketplace.

**A Brotherly Shove Might Score You Six, but a Mighty Mistake Could
Cost You More Than Six Figures**

PROGRAM

11:30 am **Registration and Lunch**

12:15 pm **Welcoming Remarks**

Matthew L. Schrader, Esq., Reminger & Co.
Chair, Eagle International Associates

Program Introduction

Paul M. Finamore, Esq., Pessin Katz Law
Yelena Graves, Esq., Strongin Rothman & Abrams
Program Co-Chairs

12:30 pm **E-I-AI-O! – Artificial Intelligence in Claims and Litigation**

Moderators:

Matthew L. Schrader, Esq., Reminger Co., LPA
Yelena Graves, Esq., Strongin Rothman & Abrams

Panelists:

Ed Bowman, Senior Vice President Casualty Claims, Cumberland Mutual
Anthony Danza, Partner, Equipment Services Department, YA Group

1:30 pm **When Social Media “Hurts”**

**Recent Decisions in Employment Law Dealing with First Amendment Rights and Social
Media Posts**

Gigi Garcia, Director of Talent Acquisition (NA) and Employee Relations (US), BrightPath
Brian H. Leinhauser, Esq., MacMain Leinhauser PC
Daniel J. Ripper, Esq., Luther-Anderson PLLP

2:30 pm **BREAK**

2:45 pm **Whether You Play D or O, the Playing Field is Shifting, So Don't Get Left Behind**

Moderators:

Paul M. Finamore, Esq., Pessin Katz Law

Jeremy D. Hawk, Esq., Taylor Wellons Politz Duhe

Panelists:

Jennifer Greene, Senior Claim Specialist, Brown & Brown

Jacquelyne Kennedy, Complex Claims Analyst, Allianz Commercial

Matthew Photis, Managing Director, Financial Lines, Allianz Commercial

3:45 pm **Levelling the Playing Field and Defending Against the "Philly Special"
Effective Use of Jury Consultants and Focus Groups to Prevent Trick Plays and Nuclear Verdicts**

Moderators:

Jason J. Campbell, Esq., Gill Ragon Owen

William H. McKenzie, Esq., McKenzie PLLC

Jury Consultant: Jennifer Cuculich, JD, MA,
Co-Founder, JuryConnect

Panelists:

Bert Dizon, Claims Manager, Cardinal Captive Strategies

Corey Sanders, Senior Claim Executive, General Star

4:45 pm **Closing Remarks**

5:00 pm **Reception**

6:00 pm **Dinner**

APPROVED CE / CLE CREDIT HOURS

4 .0 General Adjuster - Florida and Texas

4.0 Legal - Illinois and Pennsylvania

3.5 CLE, 1.0 LPM - Wisconsin

**A Brotherly Shove Might Score You Six, but a Mighty Mistake Could
Cost You More Than Six Figures**

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A graduate of Rutgers University and Penn State Dickinson School of Law, Ed joined Cumberland Mutual after 19 years as an insurance defense trial lawyer in New Jersey. Ed manages claims professionals handling a wide array of claims including auto, premises liability, personal and commercial general liability, D&O, construction defect, professional liability, workers compensation and employment practices liability.

Ed has been a panel presenter for AM Best, CLM and other claims organizations on diverse topics including Drone Liability, Generational Change in Litigation Management, Carrier Defense Counsel Relations, Liability Issues Arising from Cannabis Legalization, Social Inflation, Reptile Tactics, Anti-Fraud Strategies, Artisan Contractor Construction Defect Defenses, Defense Counsel Succession and Claims Management in the Digital Age.

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Jason Campbell is a shareholder and director at Gill Ragon & Owen P.A. in Little Rock, Arkansas. His practice over the past 23 years has been primarily concentrated towards representation of professionals, premises owners, trucking carriers and non-profit entities including POA's, schools, and religious organizations. Jason also serves as regional and local counsel to various lending institutions, government entities, and property developers in commercial litigation matters.

Jason has been recognized by Best Lawyers in America since 2011 and Mid-South Super Lawyers. He holds a Certified Claims and Litigation Management Professional (CLMP) certification. He is a graduate of the Litigation Management Institute held at Columbia University; the IADC trial academy; and the ABA Construction Forum Trial Academy. Jason has completed 40 hours of mediation training through the Arkansas Alternative Dispute Resolution Commission. He has taken over 50 cases to jury verdict and arbitration decision. He has successfully resolved over 350 cases through mediation. He is licensed to practice in all state and federal courts in Arkansas, the 8th Circuit Court of Appeals and the U.S. Supreme Court. He holds an "AV-Preeminent" rating from Martindale Hubbell.

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Jennifer Cuculich, J.D. is a Co-Founder and Senior Jury Consultant at JuryConnect, where she combines her background in law and education to support trial teams navigating high-stakes civil and criminal cases. With a focus on research, strategy, and persuasive storytelling, Jennifer helps clients build compelling cases that resonate with juries and judges alike. Additionally, she enjoys working with witnesses, helping them present confidently and effectively.

Before starting JuryConnect, Jennifer practiced as a litigator at several prominent national law firms and was a jury consultant at two leading jury research companies. Her case experience spans a wide range of complex matters, including antitrust, product liability, toxic torts, insurance, criminal tax defense, white-collar defense, personal injury, First Amendment issues, and sports law, particularly in areas like broadcasting and sponsorship disputes.

With nearly a decade of experience in teaching and curriculum design, Jennifer brings a strong understanding of how people process and retain information. This experience, paired with her work in litigation, enables her to help attorneys break down complex concepts and “teach” the jury through impactful narratives.

Jennifer earned her J.D. from Loyola University Chicago School of Law, an M.Ed. from National Louis University, and a B.A. in economics and psychology from Boston College. Having once lived in Paraguay, Jennifer continues to give back through her work as a board member for the Superkids Foundation, a nonprofit focused on youth empowerment.

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Anthony Danza has 18+ years of equipment and technical consulting experience within the insurance industry. He has consulted on thousands of projects and collectively billions of dollars in technology and specialty equipment claims across multiple disciplines, including manufacturing equipment and production lines, information technology, telecommunications, cyber security (data breaches and cyber incident response), electrical and mechanical systems, building systems (HVAC, electrical switchgear, fire alarm, elevators), medical equipment, medical lasers, audio video systems, electronics, aerospace, and defense. Anthony has a B.S. in Information Systems / Telecommunications from California State University Long Beach and holds a computer forensics (CCFE) certification. He has presented numerous continuing education courses and has published industry articles on various technical claim topics.

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As Cardinal Captive Strategies' claims manager, Bert Dizon, CCP, ACP, manages claims and risk for multiple construction captives throughout the U.S. Bert was previously a client account manager at Gallagher Bassett under the Alternative Market/Captive, Construction and Transportation space for all lines of coverage including Worker Compensation, Commercial Auto/Trucking and General Liability. He has extensive knowledge in claims management and coverage investigation in multiple lines of insurance including construction/Construction Defect, personal lines auto (standard/non-standard), commercial auto and trucking, general liability, professional liability, franchise risk, cyber, and cannabis. Bert brings expertise in claims mediation, a high degree of empathy, and excellence in negotiation and strategy to all his work. In 2017, he was an inaugural recipient of the Rising Insurance Star Executive (RISE) Award, and in 2022, he was the CLM Claims Management Professional of the Year in 2022. In his free time, Bert loves to cook and sing (maybe even at the same time), and he enjoys movies, television, and golf.

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Paul Finamore is a member of the Maryland firm, Pessin Katz Law, P.A. He is an experienced trial lawyer who has practiced in state and federal courts throughout Maryland and the District of Columbia for over 30 years. His experience includes litigation of general and professional liability matters, including first and third party claims, as well as employment law.

Mr. Finamore has been recognized in Best Lawyers in America in the areas of Insurance Law as well as in Litigation – Insurance. He has an AV- preeminent peer rating in Litigation, Insurance, and Labor and Employment. He has also been recognized as a top attorney by Maryland SuperLawyers magazine annually from 2008 through the present. He is a three-time recipient of the Golden Gavel Award from the Westfield Group of Insurance Companies. He is also a member of the Federation of Defense and Corporate Counsel.

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Brigitte (Gigi) Garcia, Esq. serves as the Director of Employee Relations (U.S.) and Talent Acquisition (North America) at BrightPath Kids, a proud member of the Busy Bees global childcare community. BrightPath Kids is one of the fastest-growing childcare providers in North America, with over 230 centers across the United States and Canada.

Passionate about people, strategy, and purpose-driven leadership, Gigi brings over 20 years of experience in Human Resources within the early childhood education sector. She holds a Juris Doctorate from Widener University School of Law and a Bachelor of Arts in Economics from Bucknell University. Her educational and professional background positions her as a comprehensive HR resource, with expertise spanning strategic workforce planning, mergers and acquisitions, employee relations, talent acquisition, employee engagement and retention, compensation and benefits, payroll, and leadership development.

Before joining BrightPath, Gigi led the HR function at The Malvern School, overseeing 27 privately-owned, high-quality childcare centers across Pennsylvania and New Jersey. Her additional experience in the education space includes leading HR operations for Spring Education Group and Nobel Learning Communities, supporting over 230 locations in 18 states and more than 8,000 employees.

Gigi thrives on building high-performing teams, solving complex challenges, and helping organizations grow through their people.

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Yelena Graves represents large and small clients ranging from local entrepreneurs to global manufacturers and service providers. She brings a growing wealth of experience to her litigation, arbitration and transactional practice, in which she focuses on avoiding legal risks in advance, where possible, and achieving the best possible outcomes when claims and disputes do arise. Yelena especially enjoys helping clients in preventing costly disputes through careful contract negotiation and drafting. When disputes arise, she helps resolve them through negotiation, mediation, arbitration or litigation. In doing so, she strives to partner with clients in exploring new ways of achieving the most efficient and cost-effective results, whether by leveraging technology or simply understanding client objectives. Her practice includes product liability, general liability and business matters as well as appellate advocacy.

Yelena grew up and received her undergraduate education in Ukraine. Soon after immigrating to the U.S., she obtained her law degree from Touro Law Center, where she focused her studies on international commercial law and dispute resolution. After graduation, she worked as a visiting scholar at the United Nations Commission on International Trade Law (“UNCITRAL”). She now brings her multicultural perspective and knowledge of international commercial law and dispute resolution to her work with U.S.-based and international clients.

Yelena is a member of the American Bar Association, Section of International Law (International Arbitration Committee, International Litigation Committee, Russia/Eurasia Committee, International Secured Transactions & Insolvency Committee) and Business Law Section.

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Jennifer Greene has been working in the insurance industry for 24 years and holds adjuster licenses in all states. She spent 21 years as an Investigative Specialist in the Special Investigations Unit investigating insurance fraud in a variety of lines. Jennifer started with Brown & Brown in May 2025 and works in their Arrowhead program working PPEL lines. She holds a master’s degree in healthcare administration from the University of Central Florida.

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Jeremy Hawk is a partner with the Mississippi office of Taylor, Wellons, Politz & Duhe, APLC. There are over 50 attorneys practicing with his firm in Mississippi and Louisiana.

Jeremy was born and raised on the Mississippi Gulf Coast. Jeremy received his undergraduate degree from the University of South Alabama in Mobile where he graduated with a B.A. in English in 2000. Jeremy attended law school at Mississippi College School of Law in Jackson where he was the recipient of the Victor Mavar scholarship and graduated in 2003 with his juris doctor. Following law school, Jeremy was a partner at a regional law firm, gaining 16 years of experience in Mississippi practice.

Jeremy is a trial attorney who handles a variety of legal matters in both state and federal courts throughout Mississippi. Jeremy is an AV Preeminent Rated and a Silver Client Champion with Martindale Hubbell and Lawyers.com.

Jeremy's practice focuses on the defense of general personal injury matters for individuals, companies and insurance carriers. Jeremy's practice also includes the defense of motor vehicle accidents, premises liability, professional liability and E&o claims, insurance coverage disputes, bad faith litigation, trucking defense, employment and labor defense and other general insurance defense matters. Jeremy has tried numerous jury cases to verdict in both state and federal courts in Mississippi.

Jeremy is licensed to practice law in all state and federal courts in Mississippi and the United States Fifth Circuit Court of Appeals. Jeremy is also licensed to practice in the Mississippi Band of Choctaw Indians Tribal Court. Jeremy is a member of the Defense Research Institute, Mississippi Defense Lawyers Association and Madison County Bar Association. Jeremy attended the IADC Trial Academy at Stanford School of Law in 2008.

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Jacquelyne Kennedy is a Complex Claims Analyst for the Financial Lines team at Allianz Global Corporate & Specialty (AGCS). Jacquelyne has experience handling a variety of insurance coverage claims and litigation involving: Private and Public Financial Institutions, Private Equity, Mergers and Acquisitions, and Multinational Account exposures for Directors & Officers and Errors & Omissions policies as well as lines of business in Property & Casualty, Environmental, and Alternative Risk Management. Prior to joining AGCS, Jacquelyne worked in private practice and 20 years at American International Group in various management and director roles, and recently as a Manager of D&O Claims at Starr Insurance Company.

Jacquelyne is a graduate of Allegheny College with a Bachelor of Science, Duquesne University with a Juris Doctor and Master of Science, and University of New South Wales with a Certificate in Environmental Study.

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Matthew Photis is a Managing Claims Director with nearly 25 years in the insurance business working specifically with Financial Lines. He currently leads the team responsible for handling Financial Institution Errors & Omissions as well as public and private Directors & Officers and Transactional Risk claims for Allianz Commercial. Prior to joining Allianz, Matthew handled Financial Institution claims at AIG, Everest, and Berkley FinSecure. Matt is a '99 grad of Pace University School of Law.

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Corey Sanders joined General Star in 2019 and is currently a Senior Claims Executive in the Professional Liability Unit at General Star handling matters involving medical malpractice, lawyers malpractice, real estate liability, accountants liability, architecture and engineering liability and title agents liability. Corey began his career doing general legal practice, and handled various areas of law including criminal law, family law, civil litigation, juvenile court and probate court matters. He was also a Guardian Ad Litem in the Fulton County Probate Court of Georgia where he represented minors and incapacitated individuals. In 2011, he joined GEICO as a Staff Counsel attorney and represented personal automobile policyholders. While at GEICO, he handled discovery matters, took depositions, tried bench and jury cases and assisted adjusters with settling automobile personal injury cases. In 2013, he joined AIG as a Senior Commercial General Liability Specialist and handled high exposure primary and excess commercial general liability matters, including premise liability, commercial general liability, products liability, commercial auto and NY Labor Law. In 2017, Corey joined Nations Builders Insurance Services as a Litigation Specialist and handled specialized areas of commercial general liability such as crane/rigging, concrete pumping, heavy haul trucking and construction. He also assisted insureds with drafting construction contracts, equipment rental agreements and assisted with OCIP/CCIP contract provisions and reporting and risk management. Corey has a Bachelor of Science degree in Biology from Morehouse College, and a Juris Doctor from Emory University.

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Matthew Schrader is a shareholder in Reminger Co., L.P.A.'s Columbus office. He has litigated and tried cases involving professional liability, medical malpractice, wrongful death, products liability and copyright infringement. Matthew has tried cases in both the state and federal courts throughout Ohio. He has also argued and briefed appeals in Ohio's appellate courts and the Fourth and Sixth Circuits. Matthew earned his B.A. from Xavier University, University Scholar in 1998 and his J.D. from the University of Dayton School of Law in 2001.

For nearly 10 years, Matthew served as the Coach of and Advisor to the Mock Trial Team of the Capital University School of Law, where he also served as Adjunct Professor teaching second and third year law students trial advocacy and evidence. Matthew has acted as general counsel to one of central-Ohio's largest non-profit organizations, a health, wellness and addiction treatment facility, and a large auto parts distributor. He has spoken to audiences throughout the country on issues dealing with trial practice, jury selection, medical negligence, professional liability, claims management and employment issues. He is Rated AV® Preeminent™: Very Highly Rated in Both Legal Ability and Ethical Standards by Martindale Hubbell Peer Review and has been recognized as a Rising Star by Ohio Super Lawyers Magazine in 2011, 2014-2016 and as a Super Lawyer from 2017-2021. Matthew has also been selected as one of the Top Lawyers in Central Ohio by Columbus CEO Magazine from 2016-2021. Matthew is the current Chair of Eagle International Associates.

E-I-AI-O!

Artificial Intelligence in Claims and Litigation



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E-I-AI-O! – Artificial Intelligence in Claims and Litigation

“After a few hours of using generative AI systems, there will come a moment when you realize that Large Language Models (LLMs), the new form of AI that powers services like ChatGPT, don’t act like you expect a computer to act, instead, they act more like a person. It dawns on you that you are interacting with something new, something alien, and that things are about to change. You stay up, equal parts excited and nervous, wondering: What will my job be like? What job will my kids be able to do? Is this thing thinking? You go back to your computer in the middle of the night and make seemingly impossible requests, only to see the AI fulfill them. You realize the world has changed in fundamental ways and that nobody can really tell you what the future will look like.” Ethan Mollick, “Co-Intelligence, Living and Working with AI,” Portfolio / Penguin 2024

Throughout history, many General Purpose Technologies (GPTs) have fundamentally transformed the way we live and work. Think about steam power, computers, the internet, or smartphones. Today, we are encountering another such transformation: AI. Its impact, already explosive across many aspects of human activity, remains uncertain in numerous ways. Yet one thing is clear—we are at the tongue of the proverbial rapid, and there is no turning back.

Industries across the spectrum, including insurance and law, are actively exploring how to integrate AI into their processes. As lawyers and insurance professionals work side by side, AI presents both tremendous opportunities and significant risks. This paper does not attempt to resolve the complex challenges posed by AI. Rather, it highlights some of these opportunities and risks, inviting reflection on how this transformative technology may reshape the future of legal services and claims management.

I. Claims Adjustment with Generative and Agentic AI

Insurers are deploying AI throughout the claims lifecycle – from first notice of loss to final payment. Generative AI now summarizes voluminous claim files, transcribes and highlights key points from calls, and even drafts correspondence within seconds – tasks that once took adjusters hours. Agentic AI (autonomous AI “agents”) can execute routine steps without human intervention. For example, carriers can enable “straight-through” processing for simple claims via AI agents that automatically handle documents, make initial decisions, and personalize communications, freeing human adjusters to focus on

complex cases^[3]. These changes mark a shift from labor-intensive workflows to AI-augmented processes that are faster and more data-driven.

A. Opportunities:

- **Efficiency and Speed:** AI accelerates claim handling. Bain & Company estimated generative AI could reduce property-casualty loss adjustment expenses by 20–25% and claim leakages by 30–50%. Routine administrative tasks (filing forms, note-taking, email triage) are automated, allowing adjusters to reach resolutions faster.

- **Enhanced Decision-Making:** AI systems analyze vast datasets to support better decisions. Machine learning models flag potential fraud patterns, recommend optimal reserves, or suggest when to involve specialists (e.g., a nurse case manager for an injury claim) – a “second set of eyes” that improves accuracy. AI-driven insights may help predict which claims are likely to escalate or litigate, enabling early interventions to mitigate losses.

- **Consistency and Accuracy:** Automating routine evaluations can reduce human error. AI tools apply rules uniformly and don’t “get tired,” potentially avoiding the inconsistent outcomes that manual processes might produce. For example, AI coverage assistants (like Turvi’s CoverAI) interpret policy wording rapidly and uniformly, helping with coverage determinations and reducing inadvertent errors.

- **Workload Relief:** Critically, AI may offer relief to overburdened claims professionals. By offloading drudgery (data entry, sorting documents), AI may reduce burnout and allow human professionals to concentrate on tasks requiring empathy and complex judgment.

B. Risks:

- **Data and Bias Issues:** AI models are only as good as their training data. If historical claims data contain biases or errors, the AI may perpetuate unfair outcomes. There is a substantial risk of unintentional discrimination (e.g., if an underwriting AI implicitly penalizes certain demographics) or denial of legitimate claims due to skewed algorithms. Regulators in at least 11 U.S. jurisdictions¹ have responded by issuing bulletins or rules to ensure AI-driven decisions avoid illegal bias in insurance.

- **Lack of Transparency:** Many AI systems function as “black boxes,” making it hard to explain decisions to claimants or in court. This opacity raises questions of accountability – e.g., if an AI auto-denies a claim that a human would pay, who is responsible? Notably, class actions have been filed against health insurers alleging that faulty AI algorithms wrongfully denied care, with plaintiffs claiming the insurer knew the tool was error-prone.

¹ As of 4/30/2024, Alaska, Connecticut, Illinois, Kentucky, Maryland, Nevada, New Hampshire, Pennsylvania, Rhode Island, Vermont, and Washington have adopted NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers. California, Colorado, New York, and Texas issued insurance specific regulations/guidance.

Will the courts expect insurers to justify not just the claim decision, but the process (including any AI) used to reach it?

- **Hallucinations and Errors:** Generative AI can “hallucinate” facts or legal citations, producing content that looks confident but is false[26]. In claims, this could mean an AI drafting an inaccurate denial letter or mis-summarizing evidence. Without rigorous human oversight, such errors could lead to improper denials or admissions. Many are familiar with examples involving an attorney filing a ChatGPT-drafted brief that cited fake cases. Insurers must therefore carefully validate AI outputs – a “trust, but verify” approach – to avoid acting on flawed information.

- **Privacy and Security:** Claims data is sensitive (personal details, medical info). Feeding confidential data into third-party AI tools poses confidentiality and cybersecurity concerns. Insurers must implement AI in a way that safeguards personal information and complies with privacy laws.

- **Overreliance & Human Element:** Not all claims should be handled by AI alone. Complex or delicate cases demand human judgment and compassion. Industry experts caution that while low-complexity, high-frequency claims may become fully automated, human adjusters will remain essential for high-severity cases requiring empathy and nuanced negotiation. The key is finding the right balance – using AI to assist, not replace, human expertise.

II. AI in Litigation Support and Legal Services

In litigation, generative AI promises to streamline many tasks traditionally done by attorneys or legal staff. For example, modern AI legal assistants like Harvey or Legora can draft legal briefs, summarize case law, analyze contracts, and even generate coverage opinion letters based on policy language. In coverage litigation specifically, AI is “*fully capable of generating legal briefs, coverage letters, [and] coverage determinations,*” closely mirroring what skilled coverage lawyers produce. This augments (and potentially disrupts) the previous model where junior lawyers spent many billable hours on legal research, drafting, and case file updates. Advanced analytics and “legal AI” leverage case management: mining litigation data to predict case outcomes, assess case complexity, and even to guide which attorney is assigned to a case. In short, AI is introducing more data-informed process into an experience-driven art of litigation.

A. Opportunities:

- **Efficiency in Legal Work:** Generative AI enables faster drafting of pleadings, motions, and legal research. Tasks that might have taken hours can be completed in minutes with AI assistance. While this efficiency can lower legal costs, how will it ultimately affect the pricing models for delivery of legal services?

- **Strategic Insights:** AI-powered litigation analytics give carriers and their lawyers a

strategic edge. By analyzing historical data on juries, judges, opposing counsel, and case attributes, AI can help predict likely outcomes or “nuclear verdict” scenarios, guiding defense strategy. AI decision-support tools can also suggest optimal litigation plans and budgets by comparing a new case to thousands of past cases. These insights help in setting reserves and resolving suits more cost-effectively.

- **Improved Collaboration and Consistency:** A comprehensive litigation data platform allows all stakeholders – claims professionals, defense counsel, managers – to work from a shared, data-rich view of the case. This “single pane of glass” fosters better communication (e.g. adjusters can see real-time updates or AI-generated case summaries) and ensures consistency in how similar cases are handled. The result is more transparent and aligned carrier-counsel communications.

B. Risks:

- **Quality Control and “Hallucination” Risks:** Relying on AI-generated legal work carries the risk of inaccuracies. As noted, generative AI can produce plausible-sounding but incorrect statements of law or fact. It is important to remember that AI is a collaborator not a replacement of an attorney. Thus, robust human oversight and AI training are required. Lawyers must remain accountable for the work product and verify AI outputs against actual legal research. Ethical rules are evolving to demand that – for example, the ABA has reminded attorneys that using AI is fine “but only to the extent that the lawyer can reasonably guarantee” confidentiality and accuracy in its use.

- **Client Confidentiality:** The integration of AI into litigation support raises significant confidentiality concerns. Many generative AI tools operate in the cloud or on third-party servers and their use may result in a waive attorney–client privilege or breach data security. But we have faced these issues with other, now commonplace technologies, such as email.

- **Overdependence on Automation:** There is a risk of human judgment if AI analytics are over-relied upon. For example, an algorithm might suggest a low settlement value based on averages, but an experienced attorney might know unique case nuances that justify a higher value. Blind faith in AI predictions could lead to suboptimal legal decisions. Moreover, overreliance on AI may ultimately lead to technological dependence and reduce our ability to think. Additionally, the human relationship aspect – personal communication between insurer and counsel – may suffer if everything is driven by dashboards and AI-written reports. Trust and intuition still play a role in litigation; an over-automated process might overlook “soft” factors (like witness credibility or jury sympathy) that a seasoned litigator would catch.

- **Adaptation Costs:** The legal community (both insurers’ in-house teams and outside law

firms) face a learning curve and significant costs to implement AI effectively. Purchasing or developing legal AI systems, training staff, and updating workflows require upfront investment. Smaller law firms on insurer panels might struggle to afford advanced AI tools, potentially creating an uneven playing field in which only large firms reap AI's benefits. Insurers must consider how to support or incentivize their smaller counsel to adopt technology so that the overall defense ecosystem improves uniformly.

III. Emerging Models in Legal Service Delivery with AI

Advances in generative and agentic AI will drive the insurance industry and legal community to rethink how legal services are delivered. Key aspects of the traditional model – from how attorneys communicate with insurance clients, to how they bill, manage cases, protect confidentiality, and get selected for assignments – may all be re-examined.

AI is poised to streamline communications between insurance carriers and their lawyers. For example, AI systems can automatically generate case status updates or summaries for the client. These tools make communication more timely and consistent. For example, a question from the carrier “*What’s the likely outcome of this motion?*” might be answered by an AI system drawing on the case file and legal precedents, available 24/7. But over-automation of communication could remove the nuanced counsel that lawyers provide.

The traditional billable hour model is under pressure in the AI era. If AI tools enable lawyers to complete tasks *dramatically faster*, the old model misaligns value and price. Under pure hourly billing, that means clients would pay less while the law firm’s revenue drops, an unsustainable outcome. Will AI catalyze a shift toward alternative fee arrangements that focus on value delivered rather than hours? And how will that “value-based” price be determined? If a task that used to take 20 hours now takes 2 hours with AI, what is its “value-based” price?

AI is also impacting legal project management (LPM), which involves planning, budgeting, and managing the workflow of a legal case. Complex litigation has many moving parts (discovery deadlines, witness prep, motions, etc.). According to Gartner Consulting, up to 80% of project management tasks might be replaceable by AI by 2030, and GenAI is already being used to automate status reports, calendar tracking, and document management in legal matters. In this regard, AI may help to keep litigation on track and within budget. But litigation is not fully predictable or linear. Human judgment is still needed and should override AI when a case takes an unforeseen turn, as over-reliance on project templates derived from past data might lead to inflexibility.

IV. AI as a Co-Worker: Enhancing Work Environment and Work-Life Balance

Rather than replacing professionals, AI is increasingly seen as a “co-worker” that works alongside insurance claims professionals and lawyers. When used thoughtfully, AI can

offload menial tasks, reduce stress, and even improve job satisfaction – contributing positively to work-life balance.

For attorneys, especially those in litigation, long hours and high stress have often been accepted as the norm. AI offers a way to change that paradigm by working as an ever-available junior colleague who handles the grind of legal practice. AI legal tools can significantly cut down the time lawyers spend on low-value tasks. A recent Forrester study of corporate legal departments found that using an AI assistant for legal research and drafting allowed a shorter workday or workweek and a better work-life balance. Perhaps all of this contributes to a healthier work environment, where efficiency gains translate into more predictable hours and less burnout. In a profession notorious for poor work-life balance, that may be a game-changer.

AI as a co-worker can also accelerate learning and career development for both insurance professionals and lawyers. AI can serve as a tutor and coach, again when used thoughtfully. The consensus is that AI should be used to complement training, not replace it.

With repetitive grunt work minimized, the workplace culture can shift to value higher-level contributions and creativity. We can engage in problem-solving and client engagement, which are more motivating activities. In insurance claims teams, for instance, if AI handles the paperwork, team meetings can focus on complex claim strategies or customer service improvements, rather than status checklists. This creates a more engaging environment. On the law firm side, leveraging AI might encourage innovation and quality of results as measures of success, which many lawyers would find more fulfilling.

In summary, AI as a co-worker, when used thoughtfully and purposefully, has the potential to improve the workplace for insurance and legal professionals by taking the robot out of the human – letting the machines handle machine-like tasks, so the humans can do human-centric work.

While many challenges remain in understanding the role of AI, the risk of not adopting AI may also be significant– law firms that fail to do so could lose talent and clients. Embracing AI’s co-worker role, with appropriate safeguards, may be the path to a more sustainable and positive future for both insurance claims professionals and attorneys.

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WHEN SOCIAL MEDIA “HURTS”

Recent Decisions in Employment Law Dealing with First Amendment Rights and Social Media Posts



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When Social Media “Hurts”

Recent Decisions in Employment Law Dealing with First Amendment Rights and Social Media Posts

The First Amendment of the Constitution has been a significant part of the United States Supreme Court’s rulings over the last several years. Whether public funding or religious accommodation have been the subject at hand, the Supreme Court has seen fit to review and provide guidance to public entities and employers regarding the boundaries protected under the First Amendment. In this document, we will review the prior state of the law related to various First Amendment issues facing public entities, identify specific cases and rulings from the court regarding their implications, and provide guidance on risk assessment and avoidance for public entities.

The First Amendment of the Constitution reads that Congress shall make no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances. Under the First Amendment, freedom of speech, freedom to practice your religion, and freedom to assemble and address grievances are all protected. In recent years, public entities and their decisions regarding discipline of students, discipline of public employees, and public entity decisions related to social media interactions have all arrived at the Supreme Court for assessment and evaluation.

School Speech

In 1965, students in the Des Moines Area School District wore black armbands in protest against the Vietnam War. *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969). The Supreme Court evaluated the rights of the students disciplined for wearing the armbands and concluded that student speech cannot be restricted if it does not have a disruptive impact on the school environment. Looking across the landscape of free-speech rights, the Supreme Court has also addressed issues related to whether public employees have the same free-speech rights when speaking in their official capacity and whether teachers can be disciplined even if they engage in well-intentioned speech. In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Court ruled that public employees do not have the same free-speech rights when they are speaking in their official capacity and therefore can be subject to discipline. Additionally, in *Brown v. Chicago Bd. of Educ.*, No. 15-1857 (7th Cir. 2016), the teacher’s discipline was upheld after she was teaching a lesson on the use of racial slurs and actually used offensive speech in the classroom.

Against this backdrop, the discipline of students and the discipline of employees for speech in the classroom was weighed by the Supreme Court in *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021). In this case, a student made an off-campus comment on her social media account out of frustration related to some developments in her school career. Specifically, the student did not make the softball varsity squad and did not make the cheerleading varsity squad and expressed that she was frustrated about this by saying “F*** school, F***softball, F*** cheer, F*** everything” on the Instagram post.

The Pennsylvania School District involved in this matter disciplined the student for the comments. After appealing the discipline and having it upheld along the way, the Supreme Court sees the opportunity to clarify two (2) generations of case law regarding student speech in the social media era. Ultimately, the Supreme Court concluded that there are multiple factors to be considered when determining whether a speech that is offensive is able to be disciplined. The court weighed where the speech occurred, whose device was utilized for the speech on social media, whether the speech impacted the school community or actually disrupted the education of other students, and what the actual content of the speech was. In this case, the Court concluded that the fact that the student made the comments off-campus, that there was no substantial or significant disruption of the school environment, that the student made the comments using her own device during off hours from school and away from campus all mitigated against discipline for the student.

Statutory Considerations

Several states in reaction to social media issues and the exercise of free speech have sought to impose protections in state law to mirror or enhance the protections of the First Amendment. By way of example, Connecticut and California have both enacted laws to limit employer's (both public and private) ability to discipline an employee because of the exercise of their First Amendment guarantees. Utilizing the framework set forth in the *Mahanoy* case, states have imposed laws protecting the free speech of individuals that do not disrupt the work environment.

Pitfalls Associated with Employee Discipline

Employers must be wary of how their decision to discipline employees is perceived and the basis for such discipline. By way of example, *Watson v. Philadelphia* gives rise to a cause of action by an employee who is disciplined for his off-duty communications. Mr. Watson made a comment on social media saying, "this guy has a nice butt, I hope his girlfriend knows how lucky she is." Philadelphia Parking Authority decided to discipline and ultimately terminate Watson based on his comments and complaints from fellow coworkers. The Parking Authority represented that heterosexual male coworkers would not want to work with Watson because of his open homosexuality.

After surviving motions for summary judgment, the case went to trial and Watson was successful on his claim for sexual orientation discrimination but was unsuccessful in his race discrimination claim. In reviewing the facts of this case, it is clear that the employers must give consideration not only to the basis for termination of an employee, but also the pressures being brought to bear by coworkers and whether they may give rise to liability. While analysts cannot fathom why the Parking Authority made the decision they did to terminate this employee, ultimately the liability to the Parking Authority was clearly established causing backpay, front pay, and compensatory damages along with an award of attorney's fees to his counsel.

The Importance of Quality Policies

Lisa Ellis was employed by BNY Mellon Corporation. During the summer of George Floyd, an individual in the City of Pittsburgh drove through a protest out of frustration. As social

media commentary attached to the story of the elderly man driving through the protests, Ellis wrote that she had only wished that the individual was driving a bus instead of his vehicle. As a result of this comment and reports to BNY Mellon about it, Ellis lost her position with the company.

BNY Mellon relied on their policies relating to the offensive nature of the comments. The policy and code of social media conduct adopted by BNY Mellon warns employees that “the company requires that they always do what is right, respect others, and must not expose the company to any reputational harm.” Based on this policy and other sections related to it, BNY Mellon was able to escape liability in the case because Ellis could not establish a *prima facie* case for discrimination or an infringement on her rights. She was not successful in amending her complaint to bring a cause of action and could not find similarly situated employees who were not disciplined under the same policy.

The lesson taught from the BNY Mellon case is that well-crafted policies can be a protection for employers especially where social media and public commentary is concerned. Familiarity with the boundaries of the law related to public-sector social media restrictions is essential to avoiding causes of action or liability associated with same.

There have been several notable cases recently regarding religious freedom in the public workspace as well. The most recent decision from the Supreme Court came down in *Kennedy v. Bremerton School Dist.*, 597 U.S. 507 (2022). In this case, the football coach prayed at midfield post-game on a regular basis. Over time, numerous students joined in his midfield prayer after the games. While the coach never invited the students to this, he also never discouraged them from participation either. Initially, the school instructed the coach to cease this activity. This request was not obeyed. Thereafter, Kennedy was disciplined, and the school district attempted to work out parameters for allowing some kind of post-game observance to continue. However, unrelenting in his desire to continue his post-game prayer, Kennedy brought an action against the district for the discipline he sustained and ultimately for the loss of his position as a football coach. The US Supreme Court ruled in June of 2022 that a public school cannot prohibit an employee from engaging in workplace, personal and private, religious expression even when that expression also is overt in public. For the public entities and employers out there, there are several lessons to be gleaned.

First, schools should have clear policies about how public employees can engage in public displays of their religious beliefs. While public entities are not permitted to restrict an employee’s display or observance of their faith, there are some parameters that can be imposed by a public entity. Moreover, in accommodating employee’s religious obligations, schools should be cautious against imposing restrictions or placing substantial impediments to an employee observing their religious faith. By way of example, the United States Postal Service was recently ruled against for its decision to deny an employee an accommodation on the basis of his religion when they began seven (7) days a week delivery. The employee was a professed Seventh-day Adventist and requested that he not be required to work on their Sabbath. The U.S. Postal Service denied the accommodation and the Supreme Court engaged in a balancing test to weigh whether the requested accommodation was actually an undue hardship on the employee. *See, Groff v. DeJoy, Postmaster General*, 600 U.S. 447 (2023). Ultimately, the court concluded that an undue hardship had to be demonstrable and could not just be supported by a claim that other employees would be treated

differently. The Supreme Court ruled that an employee's right to some manner of accommodation to allow them to observe their faith and without cause of a substantial hardship to the employer rather than a mere minor inconvenience or scheduling dilemma. The court weighed the size of the organization, the availability of other employees to work on the shifts that this employee could not work, the actual disruptive effect of an employee not working on a particular day, and the availability of alternate accommodations. In this particular case, the U.S. Postal Service did not argue or examine whether or not the religious beliefs of this individual were closely held. Rather, the court ignored that issue and the Postal Service did not really raise it as a defense. I would caution employers against considering an examination of whether a particular professed belief is closely held unless there is clear evidence that the employee is not adhering to the faith they profess.

Social Media and Political Speech

Public entities must give consideration to their decision-making surrounding whether to impose sanctions or whether to delete public posts or comments on posts on social media. A recent string of cases has addressed this issue to clarify the rules related to when and how a government entity or an elected official can restrict comments in the social media environment. In *Lindke v. Freed*, the courts examined whether a public official who blocked a user from commenting on a social media page engaged in a state sanctioned act. 601 U.S. 187 (2024) In the case, Freed was an elected official who had a Facebook profile that he converted to a public page when he chose to take on an appointed position in the City. As the City manager, he would post information about the City's events and directives. Lindke posted comments on Freed's page objecting to certain positions taken by the City. Many of the comments were deleted, especially those related to the decisions of the City regarding the COVID-19 crisis. The case was litigated to the Supreme Court because Lindke alleged that Freed violated his First Amendment rights. The City attempted to defend themselves by saying that this was Freed's page, and they did not have control over the page. However, since Freed was a public official and converted this page for public viewing and because Freed posted public information on that page, the court ruled that a public official who blocks a user or prevents them from commenting on social media pages engages in state action where (1) the official possesses actual authority to speak on behalf of the government; (2) the government official purports use of that authority when speaking about a subject on their personal social media pages; and (3) public and personal social media pages are used for this public purpose. The court was quick to point out that public officials are not required to have public and private social media pages, but our recommendation would be that they do just that. If you have a public official, appointed city official, or elected official, it would be prudent to have these individuals maintain private social media pages for their family and close friends and maintain a public social media page for their office. Their separation of public and private pages would give a specific indication of whether the individual was exercising their right to speak publicly on a particular issue. Additionally, a public official or elected official would then be bound on their public page to follow city policies regarding appropriate comments or statements on public pages since that is the form they would use to speak on behalf of the public.

In a similar case, two (2) individuals (O'Connor-Ratcliff and Zane) ran for election to the Poway Unified School District's Board of Trustees. When they were running for school board, they created a campaign related page so they could provide election related information, positions

on particular issues facing the school district, and other information about how to support their campaign or their positions on issues. When elected, the campaign social media page was converted to an official account for the board member. *See, O'Connor-Ratcliff, et al v. Garnier, et al.*, 601 U.S. 205 (2024).

Some local parents were posting on these social media pages and the school board members were deleting their comments if they did not like them. The court ruled in this case, similarly to the *Lindke* case, that the individuals were engaging in an official act by restricting comments on their public facing, public purpose, social media pages.

Official Position Communications and Social Media

In addition to the above cases, public entities should be wary of public officials using their office, the power of their office, or the regulations they enforce as a means of stifling speech or association. In New York, the Director of the State, Department of Financial Services oversees banking and insurance along with other industries in the state. Maria Vullo was an outspoken Second Amendment critic and particularly critical of the National Rifle Association of America. During her tenure as the Director of Financial Services, Vullo issued social media statements, letters to individuals and industries, and others in the state directing them to give consideration to whether they are going to associate with industries or groups that promote guns and gun ownership. The case went to the United States Supreme Court and the court examined whether or not the public official abused her office or staff of the speech and association rights of others by issuing these letters and communications related to association with the NRA or insurance being provided to gun owners. *See, National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024). Ultimately, the Supreme Court ruled that there was credible evidence that Vullo's contact violated the First Amendment. The court evaluated the case using the test in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963) to determine if the First Amendment violation may exist. The court waived the regulatory authority over (1) the recipients of the communication; (2) the word choice and tone used by the regulators and communications; (3) whether the recipient of the message reasonably perceived the message to be a threat; and (4) whether the regulators message made direct reference to adverse consequences for not following the directive.

The court reasoned that the use of the public official's platform to stifle association with the NRA gave rise to a First Amendment violation that had to be addressed.

For public entities examining potential use of social media as a communication device, it would be prudent to ensure that all communications from department heads and front-line employees are regulated with good policies and evaluated by third parties before being transmitted to ensure that there are no communications going out that could give rise to such litigation. Intimidating employees, members of the public, insurance companies, or other business entities in your community can give rise to First Amendment claims that will expand the potential for liability.

Conclusion

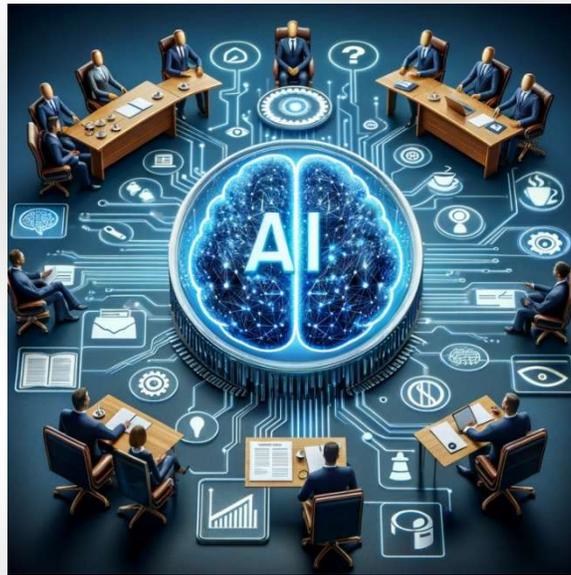
Based on the foregoing, some solid directives for public entities examining First Amendment issues and following the guidance that has been at hand for some time is prudent. Employers and public entities examining these issues should consider the following:

1. Where does the speech occur?
2. Who is the speaker and what authority do they have over the individuals receiving the speech?
3. What impact does the speech have on the recipient? Whether it is disruptive of the school environment or intimidating to the recipient is relevant to that evaluation.
4. What is the vehicle for speech?
5. Whose device or social media account was used to make the speech?
6. Is that social media account or device publicly accessible or used for communication of public information?
7. What is the content of the speech and is it reasonably likely to be offensive or to guide individuals to a particular outcome of conduct?
8. Has the speech been vetted or evaluated by another individual?
9. Does the speech, vehicle, content, and target audience comply with the policies set forth in the government agency or public entity?

As a reminder, policies should incorporate the aforementioned requirements, or due consideration should be given to these points during the policy development process. While policies compliant with free speech may face objections or litigation, they are likely to mitigate liability for public entities.

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Directors & Officers Liability in the Age of Artificial Intelligence



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Directors & Officers Liability in the Age of Artificial Intelligence

Introduction

Artificial intelligence (AI) has moved from a niche technology into a defining feature of modern business. Organizations across nearly every sector are deploying AI tools to enhance efficiency, analyze complex data, and create new business opportunities. While these developments present tremendous potential, they also create new governance challenges. For corporate directors and officers, the growing reliance on AI introduces questions of oversight, accountability, and risk allocation.

This paper considers how AI adoption intersects with the scope of directors and officers (D&O) liability. It is intended to provide a broad overview for insurers, brokers, and underwriters who are increasingly tasked with evaluating how AI risk may affect both corporate governance and insurance coverage.

Understanding D&O Liability

D&O insurance has long served as a safeguard for individuals who serve in leadership roles. Policies are designed to respond to claims that allege mismanagement, breach of fiduciary duty, or failures in oversight. Directors and officers face exposure from securities litigation, regulatory investigations, and shareholder derivative actions.

Recent trends in D&O claims highlight the growing scrutiny on leadership decisions, particularly those involving emerging technology and disclosure practices. As boards are increasingly expected to engage with complex technological risks, AI becomes an area where governance expectations are rising rapidly.

The Rise of Artificial Intelligence in Business

The expansion of AI across industries has been swift. Companies are now embedding AI in customer service functions, predictive analytics, product development, and decision-making processes. Machine learning and generative AI tools in particular have shifted the conversation from efficiency gains to questions about reliability, fairness, and ethics.

While AI can streamline operations and generate new value, it also introduces uncertainties. These include operational risks, reputational concerns, and the potential for regulatory scrutiny. For corporate leaders, the balance between leveraging AI's benefits and managing its risks is becoming a central governance question.

AI-Driven Risks Impacting Directors & Officers

The unique nature of AI presents challenges that traditional governance frameworks may not fully anticipate. Directors may struggle with the opacity of “black box” systems, where outputs cannot always be clearly explained. Limited understanding of AI at the board level can create gaps in oversight.

Ethical and legal considerations further complicate the landscape. AI systems have been shown to perpetuate bias, misuse intellectual property, or mishandle sensitive data. These risks can expose organizations to litigation or regulatory enforcement. Globally, policymakers are advancing new frameworks—such as the EU AI Act and U.S. regulatory guidance—that increase compliance burdens on leadership.

Already, the potential for shareholder litigation is evident. If an AI-related failure results in financial loss, plaintiffs may allege that directors and officers breached their duties by failing to implement adequate oversight.

Insurance Implications for D&O Policies

For insurers and brokers, AI-driven exposures raise important questions about underwriting and coverage. Underwriters may increasingly evaluate whether boards have implemented governance structures, risk assessments, and disclosure practices around AI.

Policy language may also come under pressure. Questions remain regarding how AI-related losses intersect with cyber insurance or technology E&O policies. Potential exclusions or ambiguities may create disputes over coverage. Hypothetical claims—such as shareholder suits tied to AI disclosure failures—illustrate how AI could become a driver of D&O claims activity.

Best Practices for Risk Mitigation

Although AI is complex, boards and management teams can take proactive steps. Education remains critical—directors and officers should be conversant in the risks and limitations of AI. Some organizations are forming AI ethics committees or adopting internal governance frameworks to validate models, monitor vendor risks, and promote transparency.

Disclosure also plays a role. Clear communication with investors and stakeholders about how AI is being deployed can help manage expectations and reduce the risk of future disputes.

The Role of the Insurance Industry

The insurance industry has an important role to play in this evolving landscape. Beyond underwriting, insurers can support clients by providing education and thought leadership on AI risks. Over time, AI-specific endorsements may emerge, and coordination across product lines—cyber, E&O, and D&O—will become increasingly necessary.

Conclusion

Directors and officers are navigating an environment where technology and governance intersect more directly than ever before. AI presents both opportunity and uncertainty. For corporate leaders, insurers, and underwriters, the challenge lies in anticipating risks that are still emerging, while ensuring governance and insurance frameworks remain robust.

The evolution of D&O liability in the age of AI underscores a simple truth: proactive governance and adaptive insurance will be essential to meeting the challenges of tomorrow's boardroom.

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The Critical Role of Jury Consultants and Focus Groups



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The Critical Role of Jury Consultants and Focus Groups

In today's complex litigation environment, trial attorneys increasingly recognize the value of integrating jury consultants and focus groups into their pre-trial preparation. These tools are not just reserved for high-stakes, high-profile cases; they are now essential instruments for any attorney seeking to understand how jurors may perceive evidence, witnesses, and legal arguments. By leveraging the insights provided through professional jury consulting and structured focus groups, attorneys can proactively shape their litigation strategies, mitigate weaknesses, and enhance persuasive messaging.

I. The Role of Jury Consultants

Jury consultants are specialists in behavioral science, communication, and legal strategy. They assist legal teams in selecting jurors, preparing witnesses, crafting trial themes, and interpreting group dynamics. However, one of their most valuable services lies in facilitating and analyzing focus groups. With their expertise in moderating discussions and interpreting psychological and sociological data, jury consultants can provide actionable insights into how a jury is likely to respond to various aspects of a case.

II. Types of Focus Groups

Focus groups vary in structure depending on the goals of the legal team and the nature of the case. The most commonly used formats include:

- **Exploratory Focus Groups:** These are open-ended sessions conducted in the early stages of case development. They help attorneys test different case theories, identify juror biases, and understand emotional triggers related to case facts.
- **Structured Focus Groups:** These simulate mini-trials with evidence presentation, opening and closing statements, and deliberation periods. Attorneys can observe juror reactions to key themes, assess credibility of witnesses, and test demonstratives or exhibits.
- **Online Focus Groups:** Leveraging digital platforms, these groups allow broader geographic reach and cost efficiency. Although they lack the nuance of in-person observation, they can still provide valuable feedback on the clarity and persuasiveness of legal arguments.
- **Shadow Juries:** Composed of demographically matched individuals, shadow juries attend trials (or simulations thereof) and provide real-time feedback to the trial team. This allows for strategic adjustments during the trial itself.

III. Types of Insights Focus Groups Provide

Focus groups reveal how laypersons interpret case facts, perceive witnesses, and react to legal arguments—often in ways that surprise even seasoned litigators. Common insights include:

- **Theme Resonance:** What story themes—fairness, corporate greed, personal responsibility—resonate most with jurors?
- **Juror Bias:** Are there prevalent attitudes or preconceived notions that might color how evidence is received?
- **Witness Impact:** How credible and likable are key witnesses? Are they persuasive or do they raise skepticism?
- **Damage Assessment:** What do participants believe is a fair measure of damages—if any? Are they inclined toward punitive responses?
- **Communication Clarity:** Are legal arguments being understood, or are they mired in jargon and legalese?

This feedback can dramatically change an attorney's case strategy—from reordering evidence presentation to changing witnesses or even pursuing settlement.

IV. Using Focus Groups and Verdict Data to Improve Defense Strategy

By studying focus group feedback and comparing it with actual jury verdict trends in similar cases, attorneys can better calibrate their approach. For example:

- **Risk Evaluation:** Focus groups help assess the likelihood of liability or a significant damages award, thereby informing whether to settle or proceed to trial.
- **Refinement of Case Theory:** Focus group reactions can help lawyers discard weak themes and emphasize those that are more persuasive, ultimately crafting a clearer narrative for trial.
- **Voir Dire Strategy:** Understanding what qualities or attitudes correlate with adverse verdicts helps tailor jury selection questions and challenges for cause.
- **Trial Preparation:** Focus group testing can guide the development of exhibits, visual aids, and witness preparation to maximize trial effectiveness.
- **Client Communication:** Clear feedback from mock jurors allows attorneys to better explain litigation risks to clients, grounding their advice in observable data rather than speculation.

V. Ethical and Practical Considerations

Attorneys must ensure that focus groups are conducted ethically, with participant confidentiality and appropriate compensation. Additionally, while focus groups are not predictive of exact trial outcomes, they serve as an indispensable diagnostic tool. When integrated with sound legal reasoning, thorough investigation, and persuasive courtroom advocacy, focus groups can dramatically improve the likelihood of a favorable defense outcome.

Conclusion

Incorporating jury consultants and focus group research into pretrial strategy is no longer a luxury; it is a necessity for attorneys committed to delivering the best defense possible. Whether used to test arguments, evaluate risk, or refine communication strategies, these tools empower lawyers with a deeper, data-driven understanding of how real jurors think. In an age where perception often outweighs facts, understanding the minds of the jury before stepping into the courtroom may be the greatest legal advantage of all.

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