



**THE CLAIMS WORLD IS CHANGING,  
ARE YOU READY?**

**MAY 8, 2024**

**Omni Hotel at The Battery  
ATLANTA**

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# 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, Canada and Europe. 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 adjustors 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.

# THE CLAIMS WORLD IS CHANGING, ARE YOU READY?

## PROGRAM

11:30 am **Registration and Lunch**

12:15 pm **Welcoming Remarks**

Stephen J. Fields, Esq., Brinker & Doyen, LLP  
Chair, Eagle International Associates

**Program Introduction**

David V. Hayes, Esq., Bendin Sumrall & Ladner, LLC  
Program Chair

12:30: pm **Let's Get This Investigation Party Started! - A Guide for New Claim Handlers**

**Moderators:**

Jeremy D. Hawk, Esq., Taylor Wellons Politz Duhe  
Jerry Valentini, Esq., Deasey Mahoney & Valentini, Ltd.

**Panelists:**

Kelly Bradley, Claim Specialist – Major Case Unit, West Bend Insurance  
Debbie David, MCM, SCLA, Commercial Claims Manager, Accredited Surety  
and Casualty Company, Inc.  
Tahra Porterfield, Senior Claims Specialist, Design Professional, AXA XL

1:15 pm **Forensic Investigation Technologies**

Alice Donnelly, Imaging Sciences Specialist, S.E.A. Limited

1:30 pm **You Say Tomato, I Say Tik Tok - Shall We Call the Whole Thing Off?  
Successfully navigating real and perceived generational differences in  
the workplace to better defend claims.**

**Moderators:**

Carrie Moss, Esq., Bendin Sumrall & Ladner, LLC  
Mitchell A. Orpett, Esq., Tribler Orpett & Meyer, P.C.

**Panelists:**

Bolanle Akinrimisi, Claims Focus Group Leader, Beazley PLLC  
Ashlee Lepa, JD, Claims Manager, Commercial Auto, Accredited Surety  
and Casualty Company, Inc.  
Corey Sanders, JD, Senior Claim Executive, General Star  
Vickie L. Story, Litigation Specialist, Allianz Global Corporate and Specialty  
Insurance Company

2:30 pm **BREAK**

2:45 pm **Excess Exposure Claims – Why are we seeing not just nuclear, but thermonuclear verdicts and how to reduce your exposure.**

**Moderators:**

Stephen J. Fields, Esq., Brinker & Doyen, LLP

Daniel J. Ripper, Esq., Luther Anderson PLLP

**Panelists:**

Jeff Annis, Assistant Vice President, Chief Claims Specialist, Excess Casualty & Umbrella Claims, RSUI Group, Inc.

Emilie Crocker, Senior Manager, Corporate Claims, Jackson Healthcare

Sherri Michaud, Corporate Claims Director, Jackson Healthcare

4:00 pm **From Algorithms to Arguments: AI's Role in Civil Litigation**

**Moderators:**

Matthew L. Schrader, Esq., Reminger Co., LPA

Lindsey J. Woodrow, Esq., Waldeck & Woodrow P.A.

**Panelists:**

Anthony Danza, Partner, Equipment Services Department Young & Associates

David T. Vanalek, VP, Chief Legal and Compliance Officer, Richmond National

5:00 pm **Reception – Upper Pool Deck**

6:00 pm **Dinner and Ballgame – Braves Stadium – Suite 11**

**4.0 ADJUSTER CE CREDITS**  
Florida, Georgia, North Carolina, and Texas

**4.0 LEGAL CLE CREDITS**  
Georgia and Illinois

**2.5 CLE / 1.0 LPM LEGAL CLE CREDITS**  
Wisconsin

**THE OPINIONS AND VIEWS OF THE PANELISTS ARE THOSE OF THE PANELISTS ONLY,  
AND NOT THOSE OF THE PANELISTS' EMPLOYERS**

# THE CLAIMS WORLD IS CHANGING, ARE YOU READY?

## TABLE OF CONTENTS

|   | Tab      |
|---|----------|
| <b>Presenters</b>   | <b>1</b> |
| <b>Let's Get This Investigation Party Started! A Guide for New Claim Handlers</b>                                   | <b>2</b> |
| <b>Jeremy D. Hawk, Esq.</b>   |          |
| <b>You Say Tomato, I Say Tic Tok – Shall We Call The Whole Thing Off?</b>   | <b>3</b> |
| <b>Successfully navigating real and perceived generational difference in the workplace to better defend claims.</b> |          |
| <b>Mitchell A. Orpett, Esq. and Carrie A. Moss, Esq.</b>  |          |
| <b>The Rising Threat of Nuclear Verdicts</b>  | <b>4</b> |
| <b>Stephen J. Fields, Esq. and Lindsey J. Woodrow, Esq.</b>   |          |
| <b>Are We All Going to Lose Our Jobs?</b>   | <b>5</b> |
| <b>The Emerging Use of A.I. in the Insurance Industry</b>   |          |
| <b>Frank J. Deasey, Esq.</b>  |          |

# THE CLAIMS WORLD IS CHANGING, ARE YOU READY?

## ATLANTA 2024

### PRESENTERS

#### **Bolanle Akinrimisi**

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**Bolanle Akinrimisi, Esq.** is a Focus Group Leader of Cyber & Tech claims team at Beazley. Bolanle is experienced in data privacy and cyber security matters, including guiding policyholders through immediate and comprehensive responses to data breaches and network intrusions. She is experienced managing first party claims, third party claims and regulatory investigations arising out of privacy breaches. Additionally, Ms. Akinrimisi has experience managing claims arising out of Tech E&O, Intellectual Property, Media and Advertising liability. Prior to joining Beazley, Ms. Akinrimisi spent approximately three years at another major insurance company handling E&O claims for lawyers, insurance companies, insurance agents, miscellaneous professional liability and cyber. Prior to entering the insurance industry, Ms. Akinrimisi was a practicing attorney in New York City at a plaintiffs' law firm, focusing on medical malpractice and a former Assistant District Attorney for Kings County.

She is also the US Chair for the employee resource group for BeazleyRACE and the Head of Office for the Beazley Atlanta location.

#### **Jeff Annis, Esq., CPCU, AIC**

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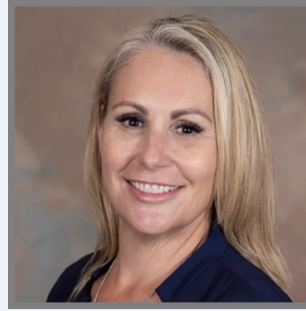
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**Jeff Annis** is an Assistant Vice President, Chief Claims Specialist in the Excess Casualty & Umbrella Claims Unit at RSUI Group. Prior to joining RSUI in 2016, Jeff worked for a global insurance carrier handling complex commercial general and auto liability claims. He graduated from Florida State University with a bachelor's degree in Finance and received his Juris Doctor from Florida Coastal School of Law in Jacksonville, FL. He is an active member of the Georgia Bar Association, carries an AIC and CPCU professional designation, and is licensed to adjust claims in all 50 states.

## **Kelly L. Bradley**

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**Kelly Bradley** is a Claims Specialist with the Major Case Unit for West Bend Insurance. She manages large exposure and specialty coverage claims. Kelly has 25 years of experience as an insurance professional which includes personal lines, commercial, and excess surplus specialty carriers. Beginning with managing simple auto PD claims, liability disputes, total loss teams and subrogation teams she eventually transitioned into a large trucking with general liability specialist and construction defects matters. Kelly participated in the Arbitration Forum as a panelist and as a trainer. As a specialist, Kelly consulted with the Arizona Department of Insurance to rewrite and design the adjuster licensing test. She strives for reasonable evaluations and resolution, with a strong passion for virtuous ethics. Kelly enjoys her family, grandchildren, traveling and giving back to her community.

## **Emilie Crocker**

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**Emilie Crocker** works as a Senior Manager of Corporate Claims for Jackson Healthcare; she has been with JH in their Risk Management department for the past six years. She currently manages mostly Professional Liability and Workers Compensation claims throughout all 50 states as well as contract reviews from an insurance perspective. Prior to Jackson Healthcare, she worked as a paralegal assisting with trials in the medical malpractice and products liability world. Emilie has a B.S. in Dietetics from Florida State University and maintains her Certified Paralegal and Certified Professional in Healthcare Risk Management certifications.

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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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**Debbie David** is a Commercial Transportation Claims Manager for Accredited Surety and Casualty Company. Her career spans over 30 years in the insurance industry with experience in varying lines of business with the vast amount of that experience in Transportation and Trucking litigation for commercial excess and surplus claims. In addition to claims, Debbie’s insurance experience includes Compliance oversight and Claims Process Management. Debbie works remotely from Phoenix, Arizona.

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**Alice Donnelly** is a visual artist with expertise in both 2D and 3D animation, special effects, and visual techniques. She earned her Bachelor of Arts degree in Animation from Loyola Marymount University, Los Angeles CA. Her specialization in virtual reality capture is complimented by her proficiency in Unreal Engine.

As a member of the ISG team, she uses laser and structured light scanning, along with drone footage and 3D printing to create visuals. These visuals are used as analytical tools to assist experts in the development of their opinions. Ms. Donnelly utilizes software, which includes Autodesk 3Ds Max, Adobe Creative Suite (After Effects, Photoshop, etc.), Faro Scene and Unreal Engine. Ms. Donnelly obtained her Remote Pilot license for the use of a drone for scene and evidence preservation, and certification for 3D laser scanning.



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**Stephen J. Fields** is a partner in the law firm of Brinker & Doyen, L.L.P. He is a graduate of the University of Illinois at Champaign-Urbana and The John Marshall Law School. He is licensed to practice law in Missouri and Illinois. He practices in the areas of personal injury defense, professional liability, restaurant liability, medical malpractice, products liability, securities liability and insurance fraud. He has tried cases in Missouri and Illinois. He has completed several arbitrations in various matters. He has provided numerous presentations to clients and industry professionals on a variety of topics. He is a member of the Missouri Bar Association, the Illinois State Bar Association, the Bar Association of Metropolitan St. Louis, Defense Research Institute, Claims Litigation Management, The Risk and Insurance Management Society, Inc., and the Missouri Organization of Defense Lawyers (board member). Steve is the current Chair of Eagle International Associates. When he is not working, he enjoys spending time with his wife and two boys riding bikes, hiking, and golfing.

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**Jeremy D. 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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**David V. Hayes** is a partner at Bendin, Sumrall & Ladner, LLC, in Atlanta. David represents and advises insurers, medical professionals, product manufacturers, businesses and governmental entities in state and federal courts across the Southeast. David is licensed to practice law in Alabama, Georgia and Tennessee. David's practice is widespread from premises liability to products liability to professional liability. He received his undergraduate degree from Samford University, in Birmingham, Alabama, and graduated from the Cumberland School of Law at Samford University.

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**Ashlee Lepa** graduated from Drake Law School and found the world of insurance claims. She has worked in claims for 15 years handling commercial auto, trucking, agriculture, general liability, products liability, liquor liability, and construction defect. Ashlee has held a variety of roles from adjuster to training consultant to leadership positions. She currently works as a claims manager at a hybrid model carrier where she manages TPA performance and collaborates with MGAs on program performance.

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**Sherri Michaud** has been with Jackson Healthcare as a Corporate Claims Director for over 13 years. She manages claims for multiple lines of coverage with a focus in medical malpractice claims. Sherri's background includes Risk Management, Human Resources, and Payroll. She has managed claims and participated in mediations all over the country.

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**Carrie Moss** is a Partner at Bendin Sumrall & Ladner, LLC located in Atlanta, GA. Carrie practices in the areas of construction and environmental litigation and general liability and has experience in both Georgia state and federal courts. She earned her J.D. from the University of Georgia School of Law in 2015, where she graduated cum laude. She studied international and comparative law through UGA's Oxford Program at St. Anne's College, Oxford University during Spring 2014. Carrie received her undergraduate degree from The University of North Carolina at Chapel Hill in 2012. As Captain and Vice President, she helped lead the women's rugby team to a national tournament appearance during all four years of college. Carrie is a member of the Eagle International Associates, Georgia Defense Lawyers Association, American Bar Association, and Atlanta Bar Association. With a passion for health and wellness, she is also an active member of the State Bar of Georgia Attorney Wellness Committee. Carrie represents clients in the resolution of various issues involved in residential and commercial construction defect claims, construction accidents, sedimentation and erosion, mold exposure, moisture intrusion, and storm water related claims. Carrie also represents corporations, commercial property owners, retailers, and apartment and condominium management companies in premises liability, negligent security, personal injury, and mold exposure cases. She was named as a Georgia Super Lawyers Rising Star for 2020-2024.

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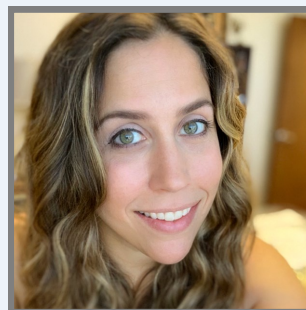
**Mitchell A. Orpett** is the attorney representative for the State of Illinois. He is a founding member and former managing director of Tribler Orpett & Meyer, P.C., a Chicago law firm serving the insurance and business communities. His practice is devoted to the defense of various professional and casualty claims and to the resolution of insurance and reinsurance disputes. He has been active in litigation, arbitration and other methods of alternative dispute resolution and has served both as advocate and arbitrator. He was awarded listings in Guide to the World's Leading Insurance and Reinsurance Lawyers and in Who's Who Legal, Insurance & Reinsurance. He has also been named as an Illinois "Super Lawyer" and to the Illinois Network of Leading Lawyers, in recognition of his work as an insurance and reinsurance lawyer.

Mitch has devoted more than 40 years of service to the profession, holding numerous leadership positions in the American Bar Association, among others. He was elected to the ABA's Board of Governors and served for many years on its policy-making body, the House of Delegates. He was the chair of the ABA's Section Officers Conference, in which capacity he represented the approximately 240,000 members of the sections and divisions of the American Bar Association. Previously, he was chair of the ABA's 30,000 member Tort Trial and Insurance Practice Section and of the ABA's Standing Committee on Continuing Education of the Bar. He was also vice chair of the ABA's Presidential Commission on the Unintended Consequences of the Billable Hour (United States Supreme Court Justice Stephen G. Breyer, honorary chair).

Mitch is a graduate of the University of Illinois, where he earned his bachelors and masters of arts degrees. He is a graduate of that institution's College of Law.

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**Tahra Porterfield** has worked as a Senior Claims Specialist for AXA XL's Design Professional line of business for the past three years. She is a licensed attorney, and a licensed mediator, in the state of Georgia, with over 18 years of litigation and courtroom experience. She has handled cases ranging from criminal felonies to complex contract disputes, and has a keen interest in alternative dispute resolution. Tahra graduated from the University of Georgia School in 2001 and Georgia State School of Law in 2004.

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**Daniel J. Ripper** is a partner in the law firm of Luther-Anderson, PLLP in Chattanooga, Tennessee and has been in practice since 1992. He is licensed in all state and federal courts in both Tennessee and Georgia, as well as the Sixth and Eleventh Circuit Courts of Appeal and the United States Supreme Court. Dan received his BA from the University of Notre Dame in 1989 and his JD from the University of Tennessee in 1992. Since that time, he has represented corporations and other businesses as well as individuals in a variety of civil and criminal cases. His practice primarily focuses on the defense of insureds in auto, product and legal malpractice matters along with the frequently associated coverage disputes. He also represents professionals before licensing and disciplinary boards and individuals in significant criminal matters. He has extensive trial experience, both jury and non-jury. He is a member of the Tennessee Bar Association, the Georgia State Bar and the American Bar Association.

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**Corey Sanders** joined General Star in 2019 and is currently a Senior Claims Executive in the Professional Liability Unit. He handles 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, Corey 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 L. 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 Vice Chair of Eagle International Associates.

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**Vickie Lynn Story** is a litigation specialist for Allianz Global Corporate and Specialty Insurance Company. She is a graduate of Jacksonville State University, where she received a BS in Criminal Justice/Social Work. After graduation, Vickie launched her career in Birmingham, Alabama, where she began working with a plaintiff firm specializing in auto accidents. That eventually led Vickie into attending Miles Law School where she graduated cum laude. Vickie is a silver star member of Alpha Kappa Alpha Sorority, Inc. Over the last 25 years she has dedicated her time to mentoring young at-risk kids with foster parents of Jefferson County, Alabama. She currently resides in Atlanta, Georgia.

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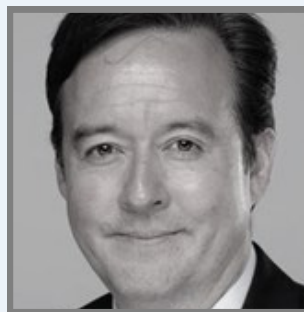


**“Jerry” Valentini** is a shareholder and board member of Deasey Mahoney & Valentini, LTD, located in Philadelphia, PA. He received his BA from the University of Delaware in 1984, and received his JD in 1987 from Whittier Law School in Los Angeles, CA. Jerry is a current, active member in several defense industry organizations, including the Federation of Defense and Corporate Counsel (“FDCC”), Defense Research Institute (“DRI”), and the Professional Liability Underwriters Society (“PLUS”). Jerry is also a member and past-President of the Philadelphia Association of Defense Counsel.

Jerry has successfully tried and defended clients of the firm in a variety of cases throughout the state and federal courts of Pennsylvania and New Jersey, including professional liability, products liability, premises liability, construction accident cases, construction defect cases, liquor liability (“Dram Shop”) cases, and many others. Jerry has also litigated insurance coverage disputes, and frequently advises clients of the firm on matters involving insurance coverage and extra-contractual (i.e., “bad faith”) exposure.

## **David T. Vanalek, Esq.**

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# **LET'S GET THIS INVESTIGATION STARTED!**

## **A Guide for New Claim Handlers**

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## **Tips for Effectively Investigating Claims**

There is no substitute for a thorough investigation into a claim. While each claim may present different circumstances, some basic investigative skills and considerations may just get you to the last chapter of your claim faster and with a better result.

### **I. STATEMENTS & INTERVIEWS.**

“I just know that any time I undertake a case,  
I'm apt to run into some kind of a trap.”  
*Nancy Drew: The Clue of the Broken Locket*

#### **A. Unrecorded Statements and Interviews.**

One of the first steps in any claim investigation should begin with obtaining statements from those immediately ascertainable individuals with knowledge of the claim. Statements serve multiple purposes both for claims investigation and for future potential litigation. At the commencement of a claim, statements can provide basic information about the circumstances surrounding the loss and the damages likely to be asserted and can open doors to other areas of investigation. While taking a statement, it is important not only to find out what someone observed, heard and understood as an eyewitness but also to learn if they know of any other witnesses, potential claimants, potential tortfeasors or other sources of information including whether any documents, recordings or photographs exist with respect to the loss. When the statement is complete, you should have a clear mental picture of what that witness knows and if he or she will be a favorable or adverse as the claim progresses.

#### **B. Recorded Statements.**

The benefit of obtaining a recorded statement is that it is a simple and effective way to lock a witness into their story. Beware, however, that these recorded statements can be discoverable. Disgruntled, angry or combative witnesses (and insureds) can provide unfavorable and potentially inaccurate information that can create problems for future litigation. If you are not comfortable with the information or prior (unrecorded) statements that have been provided by your insured, you should think twice about taking a recorded

statement. However, if you suspect the claim has an element of fraud, a recorded statement should be obtained and can often be useful during a subsequent Examination Under Oath.

### **C. Who Should You Obtain a Statement From or Interview?**

Statements can and should be obtained from everyone who may have relevant information to a claim. Consider not only the standard eyewitness statement but also individuals with information related to liability; those who may have information with respect to a claimant's purported damages; those who may be deposed; any police officer who investigated a claim may be willing to provide additional information about their recollection of an event; and first party claimants on coverage issues.

### **D. Timing a Statement.**

Timing can be everything. For liability witnesses, it can be significant to obtain a statement early on in the claims process. That is when someone's memory is the freshest and is oftentimes before statements can be sanitized or altered by talking to others, including counsel. For damage witnesses, consider taking multiple statements. In bodily injury cases, an initial statement can be useful in determining the scope of injury while statements later in the process can help evaluate status of recovery and permanency.

### **E. How to Obtain Statements.**

The most obvious and reasonable method to obtaining a statement or interview is by the adjuster handling the file in a phone call. However, there may be some cases where it would be beneficial to observe the witness as you are discussing the claim. Consider using Skype services and Facetime if the witness is agreeable and those options are available to you. If not, retention of an investigator to go out and personally conduct an interview may give you the additional insight you need. That said, when choosing an investigator, make sure it is someone you are comfortable with and who you think can provide a good analysis on the presentation of the witness and can give you an understanding of how the witness may present at trial. If it is a contentious case that you believe is likely to be litigated, consider hiring counsel to complete the

interviews or obtain the statement—especially if you are concerned with your insured or representatives/employees of your insured. These witnesses in particular need to be fully vetted as potential witnesses in order to properly evaluate the claim. If it is a first-party claim, counsel can also conduct an Examination Under Oath to further investigate the claim and any potential coverage issues.

#### **F. How to Prepare for Taking a Statement.**

“Read, read, read. That’s all I can say.”  
*Nancy Drew—The Secret of the Old Clock*

Preparation for taking a statement should begin with a full and complete understanding of your file. The importance of knowing and understanding your claim file, potential areas of concern for both liability and damages and coverage issues which can all come up during an interview or statement cannot be underestimated. Knowing your file allows you both the ability to focus in on specific areas of inquiry, but it also provides a basis for an immediate understanding of inconsistent statements or confusing statements which can then be addressed directly.

While drafting questions prior to the interview may provide some comfort to the adjuster, it often results in an ineffective interview. An outline of topics that need to be addressed can be much more effective. It allows the questioner to really listen to the answers that are being provided and formulate follow-up questions as the conversation progresses. The most common mistake in conducting interviews is failing to ask the follow-up questions. Inevitably, this stems from either not knowing your file or a feeling of being tied to a list of questions.

#### **II. INSPECTIONS.**

“The world is full of obvious things which nobody by any chance ever observes.”  
*Sherlock Holmes Quote-The Hound of Baskervilles*

Inspections can be critical in both understanding and investigating the claim. Scene investigations can be crucial in determining how a loss actually occurred. Though photographs are useful, often they misrepresent the actual

condition at the time of the loss. For example, shadows can diminish lift discrepancies in concrete and poor angles can fail to accurately show the curve of a road. If the physical conditions surrounding a loss are significant in the claim, consider retaining an investigator who can provide full and complete descriptions and ask that they take a video of the scene. It may also be important to complete the site observation at the same time of day as when the loss occurred. The location of the sun throughout the day can considerably change what the claimant/tortfeasor may have been able to observe at the time of the loss (think shadows and blinding sun).

Vehicle inspections and product inspections can also provide a great deal of information required for a complete evaluation of the claim. Consideration should be given as to whether the damages are consistent with the story given by witnesses.

### **III. ELECTRONIC SOURCES OF INFORMATION.**

“It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.

*Sherlock Holmes Quote-A Scandal in Bohemia*

While the “data” Holmes is referencing may not be electronic sources of information, his sentiment remains correct. An investigation should not be completed without a full evaluation of electronic sources of information. This “data” can come in many forms and has become more and more accessible and prominent in recent years.

Google Maps or similar websites can provide a general satellite view of a loss location. There is also the ability to look back historically at some locations which may prove to be beneficial in identifying any material changes to the location at issue. For bodily injury claims, consider accessing a satellite view of the accident site during a recorded statement or interview. It can help put the facts of the case in perspective.

Facebook can contain a plethora of information but the first hurdle is to ensure you have the correct account identified. When taking statements or conducting interviews, make sure to ask about any nicknames, hobbies, work

history, spouses names and children's names. This information can help confirm you have identified the correct social media account. Social media license search tools can also be useful.

Prior litigation history provides a plethora of information that may be useful in investigating claims. Many state court websites allow searches by individual personal legal names and business names for judgments, civil actions, criminal actions and bankruptcy proceedings. Some states also provide marriage and divorce information which can contain extensive personal information.

#### **IV. EXPERTS, INVESTIGATORS AND OUTSIDE COUNSEL.**

"Nothing clears up a case so much as stating it to another person."  
*Sherlock Holmes Quote—Silver Blaze*

Even Holmes relied on others—use Watson! Experts, investigators and outside counsel can provide invaluable insight and information into claims.

Outside investigators, as discussed above, become the local eyes and ears of adjusters who cannot complete in person evaluations, inspections or interviews. Remember, however, that recorded statements and photographs taken by investigators may be discoverable.

Defense counsel should be involved early to assist in conducting and supervising investigations where the claim is contentious, where it is likely litigation will ensue, where there are fraud concerns and in cases of high damage with questionable liability. These are all claims where care should be taken in the investigation process to ensure attorney/client privilege is maintained and protected and where defense counsel would be in the best position to set the stage for future litigation.

#### **V. CONCLUSION.**

"How often have I said to you that when you have eliminated the impossible, whatever remains, *however improbable*, must be the truth?"  
*Sherlock Holmes Quote—The Sign of the Four*

Conducting a thorough and complete investigation into all claims is the foundation for effective claim management. Invoking basic investigative skills can help limit exposure, gain control of liability and damage concerns and help efficiently evaluate and settle claims.

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**YOU SAY TOMATO, I SAY TIC TOK – SHALL WE  
CALL THE WHOLE THING OFF?**

**Successfully navigating real and perceived  
generational differences in  
the workplace to better defend claims.**

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# YOU SAY TOMATO, I SAY TIK TOK - SHALL WE CALL THE WHOLE THING OFF? SUCCESSFULLY NAVIGATING REAL AND PERCEIVED GENERATIONAL DIFFERENCES IN THE WORKPLACE TO BETTER DEFEND CLAIMS.

By Mitchell A. Orpett and Carrie Moss  
Eagle International Associates  
May 8, 2024

As Gen Z enters the workforce, generational differences in law firms and insurance companies are apparent now more than ever. The differences between younger professionals and those more experienced have been magnified by the Pandemic and its impact on remote work and the desire for a work/life balance. This article will discuss the changing workforce and accompanying change of perspective that may be needed for law firms and insurance companies to succeed in the Twenty-First Century, including training and mentorship, understanding communication styles, navigating remote work, and how to attract and retain young professionals.

## I. Our Changing Multi-Generational Workforce

There are now four generations at work in our professions, each of whom offer different perspectives, desires, and skillsets and each of whom are subject to their own unique set of stereotypes, both flattering and not. As Malcolm Gladwell has written, “When we confront a stranger, we need to substitute an idea, a stereotype, for direct experience. And that stereotype is wrong all too often.”<sup>1</sup> It is the goal of this paper to escape the easy trap of relying on such generational stereotypes and focus instead on common (but not all-pervasive) characteristics of the different generations so that we can all come to a better understanding of our co-workers, as well as the claimants, opponents, judges and jurors.

Millennials have recently overtaken Boomers as the America’s largest generation in the workforce.<sup>2</sup> Below are the different generations and a description of their preferences, according to a recent study by LiveCareer.<sup>3</sup>

### **Baby Boomers: Born 1946-1964**

Baby Boomers appear to care primarily about job security, a structured environment, face-to-face meetings, and health care and retirement benefits. Boomers are hardworking and

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<sup>1</sup> Malcolm Gladwell, *Talking to Strangers: What We Should Know About the People We Don’t Know*, Little, Brown & Company, 2019.

<sup>2</sup> Richard Fry, *Millennials overtake Baby Boomers as America’s largest generation*, PEW RESEARCH CENTER, April 28, 2020, <https://www.pewresearch.org/short-reads/2020/04/28/millennials-overtake-baby-boomers-as-americas-largest-generation/#:~:text=Generation%20X,-For%20a%20few&text=When%20Gen%20%20Xers%20were%20born.Xers%20and%2062.9%20million%20Boomers>

<sup>3</sup> Nina Paczka, *Different Generations in the Workplace, 2024 Study*, LIVECAREER, Jan. 3, 2023, <https://www.livecareer.com/resources/careers/planning/generation-diversity-in-the-workplace>

want to be recognized, as well as share their expertise. They rank their best skill as logical thinking.

### **Gen X: Born 1965-1980**

Gen Xers crave an environment focused on independence, flexibility to manage their workload, and physical and psychological space. They also care about benefits that support their family, including healthcare coverage, flexible workforce arrangements, on-site daycare, a good work-life balance, and monetary rewards. They rank their best skill as problem-solving.

### **Millennials: Born 1981-1996**

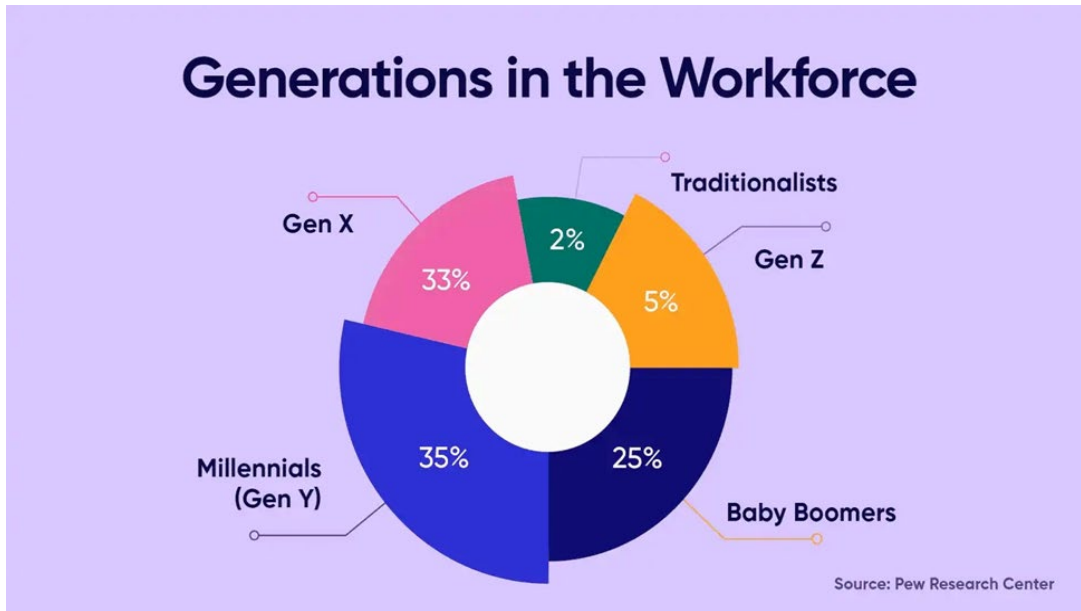
Millennials straddle the line between the then-and-now and currently make up the largest percentage in the workforce (35%).<sup>4</sup> They are more tech-savvy with modern communication styles and a demand for work-life balance. They appreciate remote work and flexible schedules, as well as career that has a deeper meaning for them. They rank their best skill as communication.

### **Gen Z: Born 1997 to 2012**

Gen Zers desire purpose-driven work, as well as a good work-life balance, remote work, growth opportunities, and more formal mentorship. Many of them care about making the world a better place and will quit due to a clash of values with their employer or a “toxic” work environment. They rank their best skill as computer-literacy.

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<sup>4</sup> Miro Miroslavov, *Overcoming Generational Differences in the Workplace [2024]*, OFFICERND, Aug. 23, 2023, <https://www.officernd.com/blog/generational-differences-in-the-workplace/>. See also Richard Fry, *Millennials overtake Baby Boomers as America’s largest generation*, PEW RESEARCH CENTER, April 28, 2020, <https://www.pewresearch.org/short-reads/2020/04/28/millennials-overtake-baby-boomers-as-americas-largest-generation/#:~:text=Generation%20X,-For%20a%20few&text=When%20Gen%20%20Xers%20were%20born,Xers%20and%2062.9%20million%20Boomers>



In a study by LiveCareer, 78% of respondents agreed that different generations working together can lead to conflict.<sup>5</sup> Differences aren't all bad, however. The study by LiveCareer found that 89% of respondents considered generation diversity in the workplace as a positive element of work and 87% viewed the opportunity to learn from each other as a good thing for their experience.<sup>6</sup> The benefits of generational differences in the workplace include knowledge-sharing, performance and productivity boost, enhanced problem-solving, a friendly work environment, and more empathetic employees.<sup>7</sup>

Interestingly, 40% of people prefer to work with people around their age, and 36% prefer to work with people younger than them.<sup>8</sup> However, 81% of respondents stated that it would be hard to have someone younger than them as their manager or supervisor.<sup>9</sup>

## **II. “Ain’t No River Wide Enough”: Overcoming Stereotypical Problems Between “Young” and “Older” Professionals.**

### **A. The Problem With That Generation Is. . . .**

In order to remediate perceived divides between generations within our office and to understand those with whom we must interact in fulfilling our jobs, it is first necessary to start by understanding the complaints each traditionally has about each other. The following illustrate some of the differing perspectives of the generations dealing with the same reality.

<sup>5</sup> *Id.*

<sup>6</sup> Tracey Brower, PhD; *What The Generations Want from Work: New Data Offers Surprises*; FORBES; Aug. 28, 2022; <https://www.forbes.com/sites/tracybrower/2022/08/28/what-the-generations-want-from-work-new-data-offers-surprises/?sh=5ddf32243f32>

<sup>7</sup> Paczka, Nina; *Different Generations in the Workplace; 2024 Study*; LiveCareer; Jan. 3, 2023; <https://www.livecareer.com/resources/careers/planning/generation-diversity-in-the-workplace>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

### **Lack of helpful education vs. Insufficient respect for who I am.**

Law schools still largely teach the same core substantive subjects that were offered at the beginning of the twentieth century, but few lawyers in the defense bar would view that education as immediately transferable to becoming an excellent lawyer or establishing an exemplary practice. Although clinics and skills courses have modernized the curriculum to some extent, law students are rarely offered the opportunity to take law office management or business skills courses unless they are part of a joint degree or other exchange program with the business school. Lawyers are taught to be law students, with the hope that we will turn out to be good lawyers. Law schools do not teach us to be business executives or even sole proprietors. Accordingly, most in the legal profession are born into the real world without the benefit of having been taught certain fundamental business and communication skills and have little practical exposure to the notion of building a successful legal career. For the Baby Boomers, who have been through decades of learning by experience, the absence of those skills in the younger generations can be quite noticeable and somewhat alarming. “Book smart” law graduates are often surprised by how little their academic accomplishments mean in their chosen workplace and often feel that they are not being accorded the respect their achievements and life path merit.

Similarly, insurance claims professionals come into the business from a variety of academic and work backgrounds. Some have taken insurance courses and there are even a few insurance curricula offered in higher education. Most, however, come into the profession without any core knowledge and learn on the job and through continuing education courses and conferences. Again, for the experienced claims professional with decades of hard-earned experience and a lifetime of “lessons learned the hard way,” the divide in knowledge between experienced and new appears quite stark. As with younger lawyers, the newer claims professional can often end up feeling disrespected because their abilities and value are overlooked or minimized.

### **Lack of practical knowledge and experience vs. Over-reliance on the “old” ways.**

In both the insurance and legal sides of our profession, we tend to learn best by doing. Experienced professionals have been “doing” for years, often having adopted the tried and true practices that we learned as young claims handlers and law firm associates. While we may be troubled by the vague notion that some of these practices may not be the only way to handle a claim and, indeed, may not even be the best suited for a particular claim or case, they are often the only methods we know and we adopt them in a kind of rote application without considering possible alternatives. The fact that other similarly situated claims departments and law firms conduct their business in generally the same fashion further stultifies our own decision making. This not only opens the door for the most experienced generation to be perceived as inflexible, but also can lead to intolerance of a younger, less experienced colleague’s perceived failure or inability to handle things the same way. It can be difficult for the experienced professional to truly be open-minded to alternative approaches to issues they have handled for years, which can cause a multitude of problems for cross-generational collaboration. The fact that fresh, innovative approaches to common scenarios may be more likely to spring from those who have

not been steeped in the old methods also lends to feelings of disrespect and frustration among those offering fresh ideas and approaches.

Additionally, in law firms, the “training” of the older generations of current lawyers was typically on-the-job and, can be seen to run counter to accepted business practice outside the legal profession. Thus, while the corporate world has embraced the mantra of client service, entire generations of lawyers have grown up focused on billable hour requirements and the partnership track. “Partnering” in the business world is replaced with “eat what you kill” in the law firm. As lawyers become motivated and directed by the need to meet their own internal rules, they can be seen by others as having moved farther away from any real dedication to their clients’ needs and interests. In this manner, the law firm “training” probably leaves many experienced lawyers less client-focused than they were when they first graduated law school and invites significant criticism and lack of respect from newer generations. This is a real issue for young lawyers, who often find themselves with the cognitive dissonance of working in an environment based on business principles with which they don’t really agree.

### **Impact of Remote Work and Pandemic**

Gone are the days when defense lawyers and claims professionals sit in the office during business hours five (or, for the Baby Boomers, seven) days a week. In a study performed by LiveCareer,<sup>10</sup> all the generations reported they expect flexibility in working options, with 76% of Millennials, 69% of Gen Z and 64% of Gen X expressing this expectation.<sup>11</sup> About a third of all generations also reported that flexible working benefits was an important benefit, and a second priority was the ability to work anywhere.<sup>12</sup> The ability to work remotely gives people more control over their lives and schedules. While not all work can be done away from the office, especially for trial lawyers, the results are clear that people are increasingly demanding more flexibility and autonomy over their work schedule and pushing back against return-to-office policies being implemented post-COVID. While some companies may still demand that lawyers or claims professionals work in the office at least some of the time, it appears that a hybrid approach is the way of the future.

**They’re isolated, have no personal contact and don’t take to training vs. They don’t take advantage of efficiencies, insist on time-wasting meetings about nothing and offer no training or mentorship.**

Besides simply preferring remote to office work, younger generations of professionals are, in the minds of many of their elders, more isolated, engaged in less person-to-person communication, and won’t ask questions when they don’t know what to do. Lack of eye contact to these folks engenders lack of trust and confidence and even respect. On the flip side, X’s, Millennials (also known as “Y’s”) and Z’s observe that their efficiency is compromised by too many live meetings or required “face time,” and are left to their own devices without proper

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

training or mentoring, all of which can be unnecessarily stress-inducing and deleterious to their happiness and mental health.

## **B. Understanding the Likely Issue: The Tyranny of Change**

As written in the novel, *Frankenstein*, “[N]othing is so painful to the human mind as a great and sudden change. That basic characteristic of all man and womankind is dramatically heightened when the particular human mind in question is more than (you fill in the blank) years old. Certainly, the most senior members of the workforce are least likely to naturally embrace change and many knowingly or unknowingly fear and resent it, whether that change is represented by a new billing or claims software, the directive that mediations and depositions all be conducted on Zoom, or a colleague handling claims or defending cases in ways that are different (and, therefore, displeasing and unacceptable).

When older professionals can be made to understand that the underlying cause of their malaise and dissatisfaction is not their younger colleagues but the changes that those colleagues represent and, importantly, when they are given assistance and training in the new methods and the new technologies, cross-generational collaboration becomes more likely. Each generation’s perceived strengths discussed in the beginning of this paper can be used to assist each other and better drive company and firm goals. Not all will be converted, but there are many in all generations who like to teach, who like to learn, and who like to work in friendly, nurturing professional environments. To the extent that companies and firms are truly multi-generational, these are certainly among the key people skills they should be recruiting, rewarding and retaining.

Having surveyed recent literature on the subject of the future of our professions, a number of common themes particularly relevant and offering solutions to the generational divide do emerge. Almost everyone predicts that technology will dramatically alter how we practice, how justice is administered, and how we spend our time as lawyers and claims professionals. That is clearly the easy part. The more difficult assignment is predicting precisely *how* those changes will manifest themselves and how we can prepare ourselves, our firms and our clients for that inevitable day. Perhaps even more important, who is best suited to thrive in that new environment and who will lead the transition and make the difficult decisions – the tech savvy new generations or senior management nostalgic for the days of yellow paper click-clacking its way out of early fax machines?

## **The Electronic Office, or, “There’s No Place Like Home”: Ongoing Struggles in the Generational Divide.**

Much has been made of the real and imagined differences between and among the generations now populating law firms and legal departments. Seminars now abound on the keys to managing (controlling?) the younger employee. Nevertheless, no one quite seems to have a handle on how generational differences are likely to play out in how we all conduct our business. Boomers hope that, by ageing, the younger generations will wise up. Millennials and X’s and Z’s can’t wait for Boomers to get out of the way and retire (the nicer of the two alternatives).

One of the key battlegrounds for this generational spat has played out in deciding where people will work. The rather strange combination of increasingly effective remote technologies and COVID greatly accelerated what was an already growing trend in insurance company claim departments and, much more slowly, in law firms. The Pandemic forced us all to work where younger professionals have long wanted to be and, suddenly, companies and firms were able to re-invent themselves into cloud-based businesses in which professionals consult and work with one another from remote locations. One would think that, with this transition accomplished, this would no longer be an issue. By all reports, however, it is. Management wants bodies in the office, whether for greater efficiencies in work, esprit de corps, or anticipated greater production. The younger employee (and maybe the older now as well) having gained some degree of independence bristles against being “forced” to return to the office, even if only for a certain number of days per week. As one of the authors wrote in some 25 years ago as he experienced the dawn of a new millennium:

It is not difficult to envision the typical civil defense law firm of the mid twenty-first century as being a small suite of conference rooms (assuming that live depositions have not already been replaced by remote video/audio feeds) and a series of computer stations where road warriors can dock for whatever time they choose. Those insisting on the luxury of the corner office will do so at their own expense and to fit their own chosen lifestyle—and will soon to be viewed like any other dinosaur or misplaced relic of a bygone age.

The Pandemic altered that projected timeline, ushering in the sudden reality that offices were no longer centralized and working from one’s home no longer a mere luxury or employment perk. Although the tension between culture and the desire for remote work will likely exist for the foreseeable future, it seems apparent that this particular horse is already out of the downtown office barn and that the older generations setting policies will should quickly learn to use the prospect of remote work to recruit, retain, and reward the next generation of professional talent.

### **Continuing work-life balance issues.**

Another topic that just won’t seem to go away is, perhaps, simply another inevitable by-product of the generational differences discussed above. Talking to most older professionals will reveal (much to the younger generation’s surprise) that the new generations of professionals have little or no real commitment to their careers. Those espousing that view often complain that, unlike when they were young lawyers, younger generations exhibit scant dedication to their craft, little attentiveness to their clients and no loyalty to their employers. While Boomer lawyers, for example, often take great delight in wallowing in the practice of law as a Dickensian “jealous mistress,” they will likewise expound on how their colleagues today are uninterested in or simply unwilling to make the commitment to their clients, their employers, or even their own careers. These critics tend to believe that such a commitment is evidenced only by long hours, hard work, and uncompromising standards of quality. They fear that young professionals today readily sacrifice career commitments at the altar of a “balanced life” and will leave colleagues, supervisors or clients hanging out to dry rather than complicate or interfere with their personal

lives. Taken to the extreme, in this world “career” is viewed as the biggest threat to “family” and the two cannot easily coexist.

Ironically, Boomers today seem to resent pretty much the same refrain that they were wont to espouse back in the 60’s when the “corporate rut” was to be avoided and you should trust no one over the age of 30. Now that Boomers are in charge, is there room to follow their own advice and forge a path that enhances life quality while meeting business goals? Again, the successful company and firm will likely embrace rather than resist this change and figure out how to gain competitive advantage by the strength and talent of their workforce and not by the hours worked or stressors overcome. Likewise, there is likely room for the younger generations to embrace the idea that a rewarding professional career is an aid, not a detriment, to a happy and healthy personal and family life and that professional achievement can strengthen, not pose a challenge to, overall mental health. Sometimes finishing a work project on time can be better for you in a multitude of ways than one more trip to the gym.

Today’s pitched battle between the “greed is good” lawyers of the early 1980s and the balanced “bottled water set” of succeeding generations—whether real or merely perceived—also presents a substantial obstacle to effective company and firm management. If management believes, rightly or wrongly, that its younger colleagues are unwilling to do what the managers did to build their own careers, the resulting disconnect can easily lead to a much wider chasm caused by lack of respect and frustration. In an environment where even the most recent graduating professional nevertheless has expectations of being treated as a fellow professional (and was probably awarded trophies for merely showing up at the soccer pitch), this chasm can greatly impede a firm’s ability to move forward as a business organization. Recognizing the different expectations and the different values at work in these situations is the first step to overcoming the divide that can easily result.

### **Mobility, Student Loans and Health Care**

Younger generations are often viewed by their elders as being disloyal because they are not afraid of changing jobs. Mobility in the profession is common and, indeed, it can be difficult to keep track of what happened to your former lawyer or client. Like remote work, this, too, is now a reality and there seems to be little to be gained by complaining about the fact that lawyers and claims professionals are not likely to spend their entire careers in the organization that first hired them. Rather, attention might be better given to the question of how to best retain those employees in whom the organization has devoted training, time and resources. A highly mobile workforce may say more about the generation that fails to achieve stability than it does about those who seek advancement or contentment elsewhere. As Caesar noted (according to Shakespeare): “The fault, dear Brutus, is not in the stars, but in ourselves.” An organization that recognizes generational differences and crafts policies that maximize younger generations’ work while appreciating their values is likely to have a distinct competitive advantage.

Student loans and health care instability are two factors that have taken on an outsized importance to many in the workforce. Indeed, it is much more common now to hear of career decisions being made for the benefits, especially health care, that accompany the employment. Companies without a robust set of employee benefits are finding it increasingly difficult to



recruit and retain high-level employees. In the “old days,” if benefits were mentioned at all in job interviews, they were ancillary to issues of job responsibilities, room for growth, independence, salary, hours and the like. Now they are often an integral part of the interview process and form, whether expressly or unspoken, a non-negotiable need for the applicant. Given the prevalence of substantial debt by many graduating college, much less law school, and given the costs of health care, the importance of these benefits should not be underestimated and, again, provide employers the opportunity to speak to their younger professionals in a manner that will resonate most successfully.

### **Staffing, Compensation and the Billable Hour**

Here, a word to lawyers. The law firm model has, with some minor mutations back and forth between diamonds, pyramids and other geometric shapes, remained largely unchanged. Partners work harder, but still wish to delegate to a highly leveraged associate class. Associates work harder yet in a Faustian bargain intended to guarantee future security. That’s the idea, anyway. Reality, however, does not always look like it’s following that model and seems to be moving farther and farther from it. If attorneys, regardless of age (one theory holds that even the erstwhile “pedal to the medal” Baby Boomers no longer want to work as hard as they have for the last 40-50 years and seek the same elusive life-work balance of younger generations of lawyers), are no longer willing to devote untold hours to the practice of law or if they now demand that those hours be logged in different environments or that their individual value be calculated in different manners, there will be an impact on law firms adhering to the traditional structure and model for delivery of legal services, either on staffing needs, compensation (i.e., profit) levels, or both. Boomers headed to retirement want to know how the same model will work if their younger colleagues will not. Economies of law firm services seemingly will be challenged in an environment of rising salaries and reduced hours. Just as law firms led the drive to the billable hour back in the last century, perhaps this phenomenon will lead to its demise in the next. In the meantime, however, the tension between the perceived habits and desires of the generations to “work hard” will continue to play out and challenge all involved.

### **III. Tips for Effective Communication and Management Across Generations**

Each generation appears to have different communication and management styles, with more experienced defense lawyers and claims professionals preferring face-to-face conversations and phone calls over email, while the younger generation prefers remote meetings, emails, and text messages. In short, it is said that Millennials seek job security and good benefits such as healthcare, but money alone will not be enough to retain them. Millennials also want opportunities for career growth, work-life balance, flexible schedules, remote work opportunities, and time for self-care to avoid burn-out. Similarly, the Gen Z workforce wants job security and more on-the-job training and mentoring, as well as work that aligns with their sense of purpose and personal values. They also prioritize their mental health and appreciate wellness programs, career development opportunities, remote work, and flexible schedules.<sup>13</sup>

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<sup>13</sup> Elizabeth Perry, *5 Generations in the Workplace: How to Manage Them All*, BETTERUP, Aug. 3, 2023, <https://www.betterup.com/blog/generations-in-the-workplace>

Baby Boomers meanwhile are left contemplating how or whether they want to end their careers, what kind of legacy they wish to leave, how their clients will be treated when they are gone and whether they still have value in a world enraptured by youth.

In the face of this celebrated divide, we remain convinced that effective collaboration and communication in a multi-generational workplace is still possible. Below are suggestions for bridging the gap and encouraging cohesiveness. All of them take work and the commitment of time and may seem like a distraction. However, these and similar measures are increasingly crucial in today's world and are ignored at your own peril.

### **Resist Stereotypes**

Much of this article is deliberately couched in what we believe are overstated stereotypes. Treating individuals within a generation as though they all share the same characteristics, act the same way and have the same goals and values is a lazy substitute for getting to know people as individuals. Assigning generation-based assumptions to your workers and colleagues is bound to be inaccurate and counter-productive. The first step to bridging the generational divide is to refuse to be enveloped in its trappings. Your workplace is populated by individuals. You owe it to them and to the success of your organization to know who they are and how they think, not because of the year in which they were born but because of the professionals they have become.

### **Identify and Emphasize Shared Values**

Claims professionals and practicing lawyers share many traits, goals and interests, regardless of their generation. Many boomers entered the practice of law for the same reasons new graduates do today. Many of the most experienced claims professionals derive the same psychic reward in successfully helping people against whom claims have been made as do the supposedly more civic-minded, public interest focused member of Gen Z. An organization that helps its members appreciate those shared goals and interests will simultaneously minimize any existing generational divide and help ensure better working relationships and collaboration among its professional staff. The old saw that "there is more that unites us than divides us" is certainly applicable to those with careers in our rather unique professions and offers a good guide to relationships in and among our organizations.

### **Revisit Policies and Increase Flexibility**

Not every rule has to remain a rule. Not every change is a threat to the soul of an organization. Workplace rules should be subject to considered re-examination. Given that the world has changed since the 1960's, is it not natural that our workplaces change as well? Boomers can become more flexible. So can X's, Millennials and Z's. We can and should all consider what is really most important and attempt to devise workplace policies that prioritize the most important and offer flexibility and some degree of self-determination for those that are not. COVID forced us to recognize that work can be done outside the office so, if this is a more important consideration for younger generations than it (understandably) was for Boomers who did not enjoy the technology that would have allowed them to do so when they were young professionals, then by all means offer some flexibility. Look for compromises when the core

mission of the organization is not impacted. To help identify what is and is not of core importance, input from all should be encouraged and fostered.

### **Hold Training Sessions and Mentorship Opportunities**

Training sessions can be an opportunity to unite older and younger groups and teach each other. Additionally, more formal mentorship opportunities and programs can facilitate younger professionals' desire for more career development opportunities, as well as create an opportunity for working together across generations.

### **Open Up Communication**

Ask team members what communication method they prefer and be open to different formats. Consider a hybrid approach of in-person meetings, remote meetings, phone, and email based on what works for your team and clients. Team development exercises, collaborative work, and upward communication all help squash biases and encourage cross-generational teamwork.<sup>14</sup>

### **Rethink Benefits**

Consider surveys or interviews of the younger generations to see what motivates them most. Instead of only offering financial incentives, consider other benefits such as remote work opportunities, flexibility with schedules, mentorships, career development opportunities, and wellness programs.

### **Conclusion: Redefining or Expanding “Success.”**

Money goes a long way in life. It did when Boomers entered the profession and it still does now. Some individuals in every generation will be motivated primarily by the almighty dollar. Most insurance companies and defense firms certainly are. “Success” will certainly always be measured at least in part by the financial well-being of the organization.

It is important for many of all generations to work for a purpose other than the cash. Not all, but many. This, too, is a fundamentally human characteristic shared across generations. Perhaps our companies, claim departments and law firms could do a better job of identifying and exhibiting those additional purposes that offer a more fulsome and meaningful definition of success – a happy and stable workforce, a culture of service, a reputation for integrity, a tradition of leadership. All of these give meaning to professionals of all ages and all would enable our organizations to redefine success and unify our workforces around a shared pursuit and a common goal. Our workplaces and our professions would be the better for trying.

~ **Mitchell A. Orpett and Carrie Moss**

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<sup>14</sup> Elizabeth Perry, *5 Generations in the Workplace: How to Manage Them All*, BETTERUP, Aug. 3, 2023, <https://www.betterup.com/blog/generations-in-the-workplace>

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# THE RISING THREAT OF NUCLEAR VERDICTS

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## The Rising Threat of Nuclear Verdicts

There has been a substantial rise in nuclear verdicts in the United States in recent years, and if you haven't been paying attention---you should be. The concept of nuclear verdicts has always been present to some degree, but in our current climate –socially, economically and politically—it seems as if the perfect storm has created an increased risk in your case becoming one of the dreaded verdict headlines. Though the issue has been studied by scholars and researched over the years by those like the Institute for Legal Reform,<sup>1</sup> those efforts have done little to quell the overall trend. This paper will discuss the basics of a nuclear verdict, some of the driving factors behind those verdicts, whether we are living in the era of “the new norm”, and how defense counsel can fight against those verdicts from discovery forward.

### I. What is Considered a “Nuclear Verdict”

It is generally accepted that any verdict in excess of \$10,000,000 is considered a “nuclear verdict,” but with current economic inflation, social inflation, social justice issues, public opinions regarding prescription drugs, political divides, etc., we are seeing verdicts well in excess of that number. Below are a few 2023 examples<sup>2</sup>.

- \$20 million verdict in a Florida medical malpractice case awarded to the family of a man who died after taking his prescribed opioids.
- \$745 million verdict in a Missouri wrongful death case arising out of a woman who was killed on a sidewalk outside of an urgent care center by a driver who inhaled nitrous oxide prior to operating their vehicle.
- \$20.2 million in a Florida case to the family of a man who died in a hospital following a respiratory collapse.
- \$35 million verdict in a Georgia case to the family of a Yale University student who died after swerving off the road and crashing into a concrete planter.
- \$75.3 million after a pregnant Missouri woman was struck by a UPS truck, resulting in brain damage.
- \$247 million verdict in Missouri for sexual assault at a massage parlor
- \$75 million and \$70 million verdicts in Missouri for auto wrongful death
- \$20 million verdict in Arkansas for operating on wrong side of the brain
- \$75 million verdict in Arkansas for MVA wrongful death
- \$78 million nursing home verdict in Arkansas, reduced to \$26 million on appeal

The median average for verdicts has increased substantially. The above are only a smattering of cases across the country outlining verdicts well in excess of \$10 million in 2023. As you can appreciate, cases where we are seeing nuclear verdicts can run the gambit of fact patterns and legal claims including the most obvious (wrongful death) to employment cases. While each instance may have fact specific issues like: unlikeable defendant, overly sympathetic plaintiff or surviving family, bad venue, unfavorable pretrial rulings, etc., we cannot ignore that

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<sup>1</sup> See Nuclear Verdicts Trends, Causes and Solutions, U.S. Chamber of Commerce Institute for Legal Reform, September 2022 by Cary Silverman and Christopher Appel, Shook, Hardy & Bacon L.L.P.

<sup>2</sup> See The Nuclear Verdicts® Tracker, Tyson & Mendes L.L.P. Missouri Lawyers Weekly 2023 Top Plaintiff Wins

these verdicts arguably well exceed what defense lawyers have traditionally relied upon to evaluate cases. Considering recent reporting, it is imperative that defense lawyers and those in the insurance industry be mindful of the risks associated with high exposure and volatile facts.

## **II. What are the Driving Factors?**

We all appreciate that every case is different, each has its own good and bad, but with that, can we appreciate what the driving factors can be behind these nuclear verdicts? It is a complex question that is currently being studied and reviewed not only by the Plaintiff and Defense bar, but also by those deeply affected within the insurance industry. So, what are some of the practical things those in the front lines as claims adjusters and as defense counsel should consider as the driving factors which can lead to a nuclear verdict?

The reptile theory is not new, but it seems as if it has gained more and more traction over recent history, especially post-covid. The reptile theory is a discovery and trial strategy that can be effectively implemented by plaintiff's counsel to relate to the primal, inherent and sometimes subconscious instincts and fears of jurors. They use those inherent humanistic emotions to implore jurors to artfully relate to their own need to protect against harm by awarding significant sums to "compensate" a victim of a wrongful act. It has been hugely successful in the past, and continues to be used successfully today. The pandemic has undoubtedly given more life to the concept where the entire world has spent the previous three years in some element of fear and self-preservation. Knowing, understanding, and defending against reptile theory arguments will be imperative in the diminishment of nuclear verdicts.

Punitive damages have also been a substantial factor in the rise of nuclear verdicts. Assessing and evaluating punitive damages has never been a simple task, however, in the current climate, punitive damages can (and have shown to) take on a life of their own. I doubt that plaintiff's attorneys have become more skilled at arguing for punitive damages, but what is clear from looking at jury verdicts across the country is that with the right facts, jurors have little hesitation to monetarily punish a defendant for its conduct as an attempt to curb future similar behaviors. Humanization of corporate defendants, preparing favorable witnesses, and even in some instances taking responsibility for some, if not all, of the liability can be significant factors in reducing punitive damage awards. A focused consideration should be given on these issues early in discovery in order to establish strong likeability, both to the Court in cases where motion practice is required to bring a punitive claim, and to plaintiff to counteract anticipated arguments and theories counsel may argue.

Venue and judicial appointments continue to be a significant factor in determining value of cases as well as the potential for a nuclear verdict. Defense counsel should be aware of "hellhole" venues and determine if the case warrants removal or seek to change venue. Hellhole venues for 2023-2024 include the following list:

- Georgia
- Pennsylvania
- Cook County, IL
- California

New York City  
South Carolina  
Michigan  
Louisiana  
Missouri<sup>3</sup>

However, any venue could be a “hellhole” given the right facts. More and more jurisdictions are seeing excessive verdicts in unexpected venues with the right facts and circumstances.

### **III. Nuclear verdicts are the New Normal**

How many of us have rhetorically (or actually) said to ourselves and others: *this case ten years ago had a value of \$10-15k, why do we now accept that it has a value of \$20-30k?* There are some concrete issues that have absolutely changed the value of cases, especially since the global COVID-19 pandemic, including the cost of health care, the overall cost of living, inflation generally and supply chain issues. Those hard numbers will be difficult to defend against, but what are some of the less concrete factors we should be aware of in evaluating cases?

We have all seen the advertisements from plaintiff’s lawyers on their websites, social media and TV and radio ads boasting about any nuclear verdict they obtained. I would suggest it has gone farther than that and has bled directly into settlement discussions. How many times have we all heard from a plaintiff’s lawyer (or saw on their website)... “well, I had a similar case and I just settled it for \$X million.” That becomes not only the threshold in their minds, but it becomes their next client’s expectation as well. Becoming aggressive—especially in mediations—to determine the differences (factually, legally and impression-wise) in the nuclear case vs. the one you are defending is imperative in tamping down those expectations.

What does that mean for those within the insurance industry? Obviously nuclear verdicts have an impact on insurance pricing for clients, an impact on claim resolution and evaluations and whether the claim should settle pre-suit or move towards litigation. In cases where large damages are a consideration, it is important to get appropriate experts involved early on. Those experts can determine whether a liability and/or damages defense exists, and if so, what things need to be preserved to maintain those defenses and what other avenues/experts, etc. need to be implemented best defend the claim. Likewise, consideration of obtaining counsel to investigate or monitor the claim early on becomes exceedingly important. Hiring defense counsel with expertise in the subject matter of the litigation, experience with Plaintiff’s counsel and knowledge of the venue/judge who will hear the case can provide guidance on the liability issues and can properly evaluate the exposure.

### **IV. So How Do We Fight Nuclear Verdicts?**

We all know the saying, “the early bird gets the worm.” While it may be cliché to use, it rings true for a reason. Defending against these massive verdicts needs to start in the claims handling process. Identifying those cases with sympathetic claimants, potential for large

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<sup>3</sup> American Tort Reform Judicial Hellholes <https://www.judicialhellholes.org/>

damages and those cases with potentially unlikeable defendants and/or corporate defendants. If you can identify the possibility of a case that could result in the theories directed towards nuclear potential, it is imperative that the right experts and defense counsel is retained early on in the process to conduct the site investigation, interviews, data and document collection, etc. so that if the claim does go into litigation, the foundation has been set for a successful defense.

Consider settling a case early – even in the presuit stages on a claim that has the potential to be an excessive one. Determining which cases are ones worth litigating versus those that only get worse over time should be a priority for every professional.

Determine what type of cases warrant a Mock Trial/Focus Group. These are very expensive and time-consuming. However on a case that could be worth in the tens of millions of dollars, knowing what themes work and do not work are helpful to the defense at trial.

If the claim proceeds to litigation, timely responding to demands and setting expectations becomes critical to a case. Having defense counsel respond not only with a rejection of any demand, if appropriate, but also with a request for additional information along with a possible analysis of the defenses and theory of damages can help in setting expectations—if not for plaintiff's counsel, then for plaintiff.

In addition, how should defense counsel would work to set expectations with a jury: should a number be introduced as to how the defense views damages, should evidentiary issues be raised early, issues with the foundation or admissibility of expert opinions can also help set the stage early on. In large verdicts and no number is given by defense counsel, more times than not, the jury picks the number of Plaintiff. Consider anchoring the jury on the defensive end.

Jury consultants and running mock trials can be critical in evaluating the defenses theories on both liability and damages, but also in evaluating exposure and whether the case should really be tried. Reputable jury consultant companies keep more up to date on all of these issues than your local defense lawyer can and they can become a critical component to avoiding potential nuclear verdicts.

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# ARE WE ALL GOING TO LOSE OUR JOBS?

## The Emerging Use of A.I. in the Insurance Industry

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## **ARE WE ALL GOING TO LOSE OUR JOBS?**

### **THE EMERGING USE OF A.I. IN THE INSURANCE INDUSTRY**

Whether we like it or not, the use of A.I. in all facets of our life is here to stay. Its uses have become more extensive in all aspects of business, including the insurance industry. The purpose of this presentation will be to explore the different forms of A.I.; its potential uses within the insurance industry and its impact, if any, on future staffing within the insurance industry.

#### **WHAT IS ALGORITHMIC A.I.?**

Essentially, Algorithmic A.I. is an extended subset of machine learning that tells a computer how to operate on its own based on pattern recognition. These Algorithms are set of instructions or rules that enable machines to learn, analyze data, and make decisions based on that knowledge. These Algorithms can perform tasks that would typically require human intelligence, such as recognizing patterns, understanding natural language, problem-solving and decision making. The use of Algorithmic A.I. can help sharpen decision-making, make predictions in real time and potentially save companies hours of time by automating key business workflows.

#### **WHAT IS GENERATIVE A.I.?**

Generative A.I. is a type of artificial intelligence technology that can produce new and various types of content, including text, imagery, audio and synthetic data. Generative A.I. goes beyond some of the limitations contained in traditional A.I. and strives to create entirely new documents or data that resembles human-created content. The main difference between traditional A.I. and Generative A.I. lies in its capabilities and applications. Traditional A.I. systems are primarily used to analyze data and make predictions while Generative A.I. goes a step further by creating new data similar to its training data. The difference is that traditional A.I. is most

proficient in recognizing patterns while Generative A.I. excels at pattern creation. Traditional A.I. can analyze data and tells you what it sees but Generative A.I. can use that same data to create something entirely new.

## **WHAT ARE LARGE LANGUAGE MODELS (LLMs) AND WHAT CAN THEY BE USED FOR**

### **A. What Is Chat GPT?**

Chat GPT is an artificial intelligence (AI) Chatbot that uses natural language processing to create human-like conversational dialogue. The language model can respond to questions and compose various written content, including articles, social media posts, essays, codes and emails.

### **B. BARD.**

Bard is Google's experimental, conversational, A.I. Chat Service. It is meant to function similarly to Chat GPT with the biggest difference being that Google's servers will pull its information from the Web.

### **C. What Is CLAUDE?**

Claude is an A.I. Chat Bot designed to be helpful, honest and harmless. It is available in three versions, Claude 1, Claude 2 and Claude Instant. The difference between the three versions is that Claude 1 utilizes sophisticated dialogue, creative content generation and detailed instructions. Claude 2 features these features together with academic features while Claude Instant provides casual dialogue, text analysis, summarization and document Q&A.

### **D. Uses of Generative A.I. in the Underwriting/Claims Process**

Subject to strict security and controls, any of the large language models identified above can power the underwriting process in connection with formulating applications and submission for insurance; collection of data from a perspective policyholder and performing an analysis of the risks involved in underwriting a policy for the perspective policyholder. This is accomplished by

the Generative A.I. digesting large amounts of information; creating summaries of underwriting files and obtaining demographic, social, economic and crime statistics for neighborhoods where an underwriting risk may occur.

Additionally, Generative A.I. can be utilized to create insurance policy language. However, there are potential issues with respect to permitting Generative A.I. generating insurance policy language. The prime example is whether the policy language generated by A.I. is enforceable either for the risk to be insured or the location of the perspective policyholder. Thus, any policy language generated by A.I. must be reviewed to determine if it is valid and enforceable.

#### **E. What Risks Are Current Prevalent With A.I. Use?**

One of the most prevalent problems in utilizing Generative A.I. is what is known as an A.I. hallucination. This occurs when a LLM generates false information. Hallucinations occur when a LLM deviates from external facts or contextual logic. For example, a firm in New York recently filed a brief utilizing Chat GPT to create the brief. Chat GPT created the brief and supported the brief by case law which didn't exist. Opposing counsel discovered this and brought it to the attention of the Court who has sanctioned the Plaintiffs firm for lack of candor to the Court. The challenge is determining whether the information generated by the LLM is true or false because the LLM is designed to produce fluent, coherent text. As a result, utilizing the hallucinations of a LLM will create problems if the information provided is the result of an A.I. hallucination. It goes without saying, that selection of A.I. vendors who utilize training models to minimize hallucinations is critically important.

Another major risk is the use of A.I. tools by staff that expose confidential or proprietary information of insureds, clients, etc. Accordingly, all companies should prepare an A.I. acceptable use policy that is reviewed and acknowledged by all employees in an organization. Further, great

care should be used in selecting A.I. vendors who prioritize information security systems that encrypt and do not store confidential documents or other customer information. Such vendors should also not use such information to train their LLM, as that creates further risk for organizations.

Despite such risks, the promise of generative A.I. is compelling, and worth the efforts to place safeguards and other governance tools in place, just like the use of any other technology.

### **USE OF GENERATIVE A.I. IN THE CLAIMS PROCESS**

Generative A.I. can also be utilized in the claims process specifically with respect to summarizing large volumes of written material for the claims team, preparing common correspondence or memos, or providing an analysis of claim value, settlement value or verdict value based on the information available in the LLM's database. A.I. may also provide an analysis of a claim based on similar claims in a specific jurisdiction. However, once again, the analysis is based entirely on the information contained within the database and, therefore, the database must be consistently updated to provide an accurate analysis of a specific claim.

#### **A. Does The Emergence of Generative A.I. in the Insurance Industry Mean Changes in Staff?**

This is the \$64,000 dollar question that may trouble people within the insurance industry and the simple answer is a resounding “NO”. There will always be the need for the human element in utilizing products generated by A.I. A.I. will expediate the underwriting and claims process but will not eliminate the need to review, analyze and ensure that the information provided by the LLM is accurate and update-to-date. While the staffing model for an insurance company or law firm may change based on the utilization of Generative A.I., the input of the human element cannot be eliminated. The perfect example of the need for the human element is the reference to the New

York law firm who utilized Generative A.I. to produce a brief which was then filed with the Court. While the brief may have been factually accurate and logically sound, it relied upon false information in the form of caselaw which did not exist. The review of the information provided by Generative A.I. to that law firm must be reviewed and analyzed by persons not LLMs.

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