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## **Using Next Generation Technology to Improve Your Litigated Claims Management Program**

### **I. Legal tech history and claims litigation management**

Technology has been transforming the Claims Litigation Management world for more than 30 years. When we go back to the early 1980's, we see a process largely dependent on human staff, using paper and that was largely very opaque and difficult to improve. It largely operated as it had for its entire existence. Some elements were just as true then as they are today. Claims professionals were still highly trained experts in their given fields of insurance risk and litigation. They partnered with and relied on professional outside counsel and they did their absolute best to represent their policy holders while securing the best possible outcome for both that policy holder and the carrier. These things haven't changed, and they are unlikely to change anytime soon.

What has changed however is more or less everything else. Staff is smaller now and far more productive. The adoption of computers made the individual far more efficient, through their ability to process large amounts of claims information quickly. Email made collaboration with peers and outside counsel smoother and committed important information to a more easily recalled format. Cell phones and then smart phones made it so people were able to access their work and find the information they needed for success.

Moving beyond the individual, all of this computerized data and the associated databases opened up the litigated claims process like never before, granting an incredible amount of data for research and analytics.

The movement to electronic billing in the late 90s made it so law firms could more quickly be paid for their work. It also meant that billing data became digitized and ready for additional insights and analytics. This also opened the door to the ability to more effectively measure and improve outside counsel performance – finding better partner firms to represent your policy holders on a given matter.

At least, that was the idea. In reality, though most everything except the human being in the chair has changed greatly over the past two decades, the reality is that many of these promises have failed to live up to the initial hype that seemed promised at the time of their delivery.

First, not all firms switched to these digital methods overnight. Second, collecting the data in a large database and utilizing that data for valuable insights, or operationalizing it, have proven to be two very different things.

Now however, we are finally sitting on the precipice of the next big changes in technology with the claims litigation process and these promises made may finally be fully realized.

## II. The next big tech mover is Artificial Intelligence

Artificial Intelligence (AI) is a buzzword; it seems to show up as much as the word “organic” at Whole Foods. This should not be taken to mean it is not a powerful tool. Like the microprocessor, AI is a single component of a larger technical ecosystem that is poised to lead to tectonic shifts across the claims and insurance industry and well beyond. According to *Forbes*, nearly 80% of insurance executives believe AI will significantly change the way carriers get data from their customers (source: <https://bit.ly/2L2UIB1>). AI is driving force behind a lot of industry disruptors – Lemonade being a prime example – and will continue to be a major component of InsurTech for the foreseeable future.

We should begin by defining what AI is and what it is capable of doing. AI is not Skynet from the Terminator movies, looking to take over the world. The AI used in solutions today is *focused* AI, built with features that serve a specific purpose and via learning over time, can produce incredible analytic results by being capable of crunching amounts of data previously impossible. We all interact with AI in our daily lives whether talking to Alexa, looking at recommendations on Netflix, or using a chatbox on a website. There is some fear over AI, but this is simply a normal part of the technology acceptance cycle.

Going all the way back to the printing press or the loom, whenever new technologies are created, people are generally terrified of what the implications may be. In general, we see this cycle begin with fear, and then as the new technology becomes commonplace, improvements are realized, processes update to accept the technology, and people follow suit. One of the fears is that AI is going to replace lawyers. The reality is that simply isn’t possible today and not for decades to come. The practice of law requires experience, intuition, and most importantly, agility in critical thinking – all elements that current AI cannot and may never match.

Lawyers that recognize the value of AI will be able to provide more value to their clients than those that don’t, or as *Law Technology Today* starkly puts it: “AI won’t replace lawyers, but lawyers who use AI will replace those who don’t” (source: <https://bit.ly/2EkAJ0a>). While AI is clearly a huge tech mover in legal, very few firms are addressing it according to Altman Weil’s 2017 *Law Firms in Transition Survey*: “Only 7.5% of firms said they have begun to make use of Ai tools, another 29% are beginning to explore their options. The remaining 64% are not doing anything or are not even aware of what is going on in this area” (source: <https://bit.ly/2qqhOWj>). The firms that utilize AI to provide better value to their clients will gain a competitive advantage and become the go-to firms for their carriers.

AI will be transformative to the practice of law and in a way that is empowering to attorneys and counsel everywhere. Current AI is very good at providing accurate information without false positives, aiding in research and discovery. This same technique can also be used to aid lawyers in providing simple opinions, preventing the need to search through past emails or precedent and freeing up attorneys to spend time on true value add tasks for their firms.

Consider a corporate attorney who is tasked with providing opinions to other business units. AI can field the initial question from the business unit and triage it. If the request is simple and has been answered before, it can provide that same answer, in the attorney's own words, back to the business unit – meaning the attorney never had to be involved. If the request is slightly more complicated, the AI can provide a potential answer, and then allow the attorney to approve or modify it before sending to the business unit, greatly expediting the process. Finally, for the most complex questions, these can be raised immediately to the attorney, increasing the signal to noise ratio for the attorney and allowing them to focus their attention on these most complex items.

These same features can be used in the realms of contracts and contract drafting/review, compliance, and more. In all cases, what is being removed for the attorney is the rote work and laborious research that drags them away high-value work. Research has shown that attorneys are only able to spend 30-60% of their work time on actual legal work, a considerable loss of time for a very valuable and knowledgeable resource.

The same is very much true in the claims process. Solutions for expediting claims are coming to market across the industry. Predictive AI is being used to review and triage claims, mark claims for straight through processing (STP), determine potential fraud, and better understand risk. Companies are using AI to write policies, process claims, and pay out claims to customers in seconds.

In the world of litigated claims, there are many uses for AI and we are seeing those come to market rapidly.

### **III. The ways AI is transforming claims litigation right now**

The world of claims litigation is complex. From detailed legal bills hundreds of line items long measured in traditional 6-minute increments to outcomes and settlements that can reach into the millions, it requires experts to properly manage litigated claims. AI can empower those claims managers for success. There are three key areas where AI is currently being implemented in the Claims Litigation process on the claims side of the house.

1. Legal Bill Review
2. Paper Invoice Transformation
3. Predictive Analytics & Law Firm Selection

#### **Legal Bill Review**

There is nothing new or fancy about Legal Bill Review. The outsourcing (or insourcing) of legal invoices for consolidated review is a concept that has endured for decades and for simple

reason: The legal invoice is complicated and often contains non-compliant billing. As such, it is in the interest of the claims group to review these invoices and correct any billing that is non-compliant. This can represent millions of dollars and is certainly worth having humans perform the task.

The challenge is that humans still miss things. Billing Guidelines are usually complicated documents, typically dozens of pages long with multiple caveats. Current e-billing technology can only catch so much – there are nuances and complexity in the billing process that existing technology won't catch. Bill Reviewers, even those who are amazing at what they do, can easily miss items due to this complexity. At a deeper level, they are only human and so can get tired, or distracted, or simply overwhelmed by the productivity demands.

AI can supplement the bill review process by being the first line of defense; essentially reading the invoice just like a human would do and providing insight into non-compliant billing. Unlike traditional rules or programmatic solutions that were binary in their output and often had false positives or negatives, AI can use everything humans have ever done in adjusting the invoices, every time it makes a decision about a single line item. It can understand firms that are more prone to improper billing, it can recognize mismatches between roles and the task performed, regardless of the specific language utilized. AI and machine learning can find patterns in the broader litigation management practice and billing that would be all but invisible to human reviewers.

AI can do all of this and then feed this information to the human bill reviewer. This effectively delivers a roadmap to your bill reviewers, showing them the line items they need to pay attention to and empowers them to make a decision on what they want to adjust and what is acceptable based on their experience. Once again, it effectively boosts the signal to noise ratio and allows the reviewer to focus on real value add in the review process.

### **Paper Invoice Transformation**

Despite the great move to electronic billing in the US, it is far from a 100% solution. Small firms, firms outside the US, and firms acting in a limited capacity are often unable or unwilling to submit electronic bills. This provides a challenge to the claims department as they now have to find a way to process these invoices outside of their platforms. This usually means great cost – either money to pay someone to type the invoices and capture the data, or processing with low review, meaning that the carrier pays for non-compliant billing or other errors not caught in the review process.

Once again, AI is changing this. AI has enabled us to read and convert paper or PDFs into standard electronic invoices. It reads the invoice like a human and then translates it to electronic format. The conversion of paper invoices again has a long history, but it was always relying on human power and elbow grease. It was error-prone and it costly, as humans had to be paid to sit and re-key a lengthy legal invoice. More recently, various providers have tried template-based systems, but these have also had serious challenges as legal invoice formats vary greatly and these template systems require costly updates, care and feeding each time a new format is encountered.

Now however, we are able to read that invoice in a more dynamic fashion and translate that unstructured data into something usable by electronic billing platforms. This also means that the full data is retained and the carrier has a better picture than ever before into their true total legal spend and their litigation management program. Additionally, the cost to process invoices can be greatly affected by automation – the Association for Image and Information Management (AIIM) reports that automation delivers a 29.9% average reduction in processing cost (source: <https://bit.ly/2zNYvOv>).

## **Predictive Analytics & Law Firm Selection**

The final area of the impact of AI we are going to discuss today within the client is the most exciting and that is predictive litigation analysis and law firm selection.

One area where current AI shines is in scanning massive amounts of data, which the insurance industry has in abundance, and providing operational insights. The AI is dynamic enough to recognize the full pattern and variables, as well as the nuance, and can offer better predictions than any traditionally structured reporting.

These insights can be offered to the claims manager at the time of decision making, meaning that the claims manager can have real time feedback, even at the start of a case, about the expected budget of the litigated claim, the amount of time to close, the expected settlement and settlement amount, and even the outcome. More importantly perhaps, it can adjust these numbers based on the Law Firms involved, both defense and plaintiff's counsel. This means that claims managers, even those who aren't familiar with the specific line of business or geographic region, can act with the wisdom of all of their peers, past and present, when selecting counsel to represent the policy holder.

## **AI Impact On Firms**

Law firms will also be impacted by this technology revolution. Firms stand to benefit just as much as routine and often unbillable tasks are automated through AI and their legal professionals are freed up to focus in on productive and billable legal work that delivers real value to their clients. Once again, there are three areas where we are already seeing this today in law firms interaction with litigated claims and there are many more to come in the future.

1. Generation of Invoices
2. Assignment of UTBMS codes
3. Time Tracking & Entry

## **Generation of Invoices**

Law Firms do not want to submit non-compliant invoices. Traditionally however, the size and complexity of billing guidelines, and the fact that they are not in operationally prescriptive language, has made them difficult for billing administrators to act upon. However, with AI, the guidelines can be completely instilled into the machine and when the invoice is generated, non-compliant items based on that specific client's guidelines can be automatically reduced or

removed as appropriate. This means that the firm doesn't have to deal with an appeals cycle and gets paid faster (as well as getting paid in an amount closer to what was actually billed).

### **Assignment of UTBMS Codes**

UTBMS codes are the driving force behind electronic billing and contain important information about the legal work performed. Unfortunately, reality does not map to these codes as cleanly as we all might like. This means that a large percentage of UTBMS codes are mis-assigned and misaligned with the work completed. It is also often time-consuming and rote for the assignment of these codes if accuracy is a goal. AI can solve this. Features like Natural Language Processing – interpreting and understanding human language – can be utilized to review a line item and automatically stamp it with the appropriate code. This lowers the time to submission and greatly increases the analytic power of the data set for both the carrier and the law firm.

### **Time Tracking**

There are few things attorneys enjoy less than capturing detailed time sheets. Many past innovations have been tried to reduce the manual effort of this process, including automatic clocks and auto-assignment of task time. These have all been met with middling success. AI however can be used to automatically create time entries based simply on the work being done on the attorney's computer or other technology. The machine learning can capture the work being done and determine an appropriate time entry dynamically, making the billing process greatly reduced in time and inefficiency.

## **IV. Summary**

Over the next decade, AI will reshape the claims legal landscape. It will not replace lawyers, but it will empower them to deliver higher value to their clients than ever before. It will alter the claims space allowing examiners to spend more time focusing on critical cases and exposures, while reducing the time they need to spend on repetitive tasks.