



CLM 2021 Focus: Diversity, Equity & Inclusion, Management Liability, Medical Malpractice,  
Product Liability, Professional Liability, Transportation, Claims & Litigation Management  
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**Artificial Intelligence is Fundamentally Changing Claims and Litigation Handling  
New Options In Litigation Management**

**Summary/Description:**

Claims handling is changing and changing fast, particularly for the most common types of high-volume claims, customer expectations are changing, and trending based on their non-insurance experiences from new business models in other industries such as next day delivery and mobile experiences.” Missed response deadlines, inconsistencies, and costly errors, are just a few of the issues that claims executives face on a daily basis. Adding to this challenge, are jurisdictional and statutory environments that in many venues have led to significant increases of filings, fueled further by the plaintiff’s bar’s strategies. Furthermore, the recent advent of automated consumer tools, has begun to expose the pressure points of corporate claims departments as they scramble to deal with the rising volume of claims.

While adding headcount and improving processes is the immediate reaction by claims departments, it is not a long-term solution. This is where technology and improved processes come in. Much of the routine claims handling tasks can be automated, achieving the level of consistency, accuracy and speed that can transform a claims department into a well-oiled machine. This session discusses how large claims departments are deploying automated solutions to achieve high efficiency so claims and litigation management professionals can focus on higher value work.

**I. Effects of Technology in Claims/Litigation Management**

Let’s face it. For decades, the legal profession has been stuck in the same old ways of processing workflows via highly manual methods requiring swaths of human labor. For the insurance industry in particular, handling claims, demands, and litigation, are all high-volume workflows that have required trained legal or claims professionals to respond, manage, and

resolve. Technology today has had, and will continue to have, a profound impact on this workflow. The ultimate impact on the legal overall is perhaps even more significant.

Millions of demand letters or claims, or lawsuits are filed every year all across the US. The challenges presented to insurance carriers in particular in handling this massive volume are numerous: missed response deadlines, inconsistent answers, high legal fees, and so on. Much of this work, however, which is currently performed largely by trained human capital, can be (and should be) performed by machines, and Artificial Intelligence (A.I.) in particular. But this “replacement” of tasks is not, and should not be, a replacement of lawyers and claims professionals, but a mere tool to augment and enhance the human skills that should be focused on higher level and more valuable tasks.

An example of such task is responding to common demands or lawsuits. Because carriers have historical data (i.e., hundreds of thousands of prior demands and lawsuits), an A.I. based system can be “trained” to respond to such common matters, using prior (and presumably preapproved) answers and responses, in an instant. Then, the human can review quickly for any red flags or anomalies that require particular “human” attention. This is not only possible today, but it is being actively deployed at major carriers. The overall goal is simple: increase efficiency of claims and legal professionals so that they can be elevated and best utilized at their highest levels.

In addition to claims or litigation, many other high-volume workflows stand to benefit from such increased efficiencies, including the handling of subpoenas, summaries of complaints, etc.

## **II. Machine-Human Collaboration – a Beautiful Thing**

As a result of States’ adoption of revised Comment 8 of ABA Rule 1.1 [requiring that a “lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology”], legal departments and professionals now find themselves asking *which* technology solutions they should implement, and no longer asking *if* they should. As lawyers and other legal professionals continue to embrace the benefits of A.I. and other technology solutions, the roles of each player along the legal workflow spectrum are evolving.

### **Corporate Client Role**

To achieve the optimal levels of efficiency possible with the proper machine-human partnership, it all starts with the corporate client. Legal departments have always had significant influence on outside counsel, particularly with high volume matters where the budgeting, case strategy, settlements, and overall management of a case are more predictable and fall into generally well-defined parameters. Thus, corporate clients can partner with outside counsel to deploy key technologies that will effectively serve to bridge the two entities

and develop new workflows that focus on allocating the right tools and resources to the right people, at the right time.

### **Outside Counsel Role**

The role of outside counsel becomes more important and impactful. Lawyers (and other legal professionals) are smart and capable, whose time value has often been diminished by the necessity of having to perform tasks that are much better handled by a machine. A machine can, and should, handle all the low-value, high volume, repetitive tasks so that the legal professional can focus on other higher value tasks. These include advise, strategy, communications, focus on key important tasks such as interviews, depositions, data collection, etc.

For example, in a typical litigation matter, the first draft of an answer, motion, discovery request responses, and other documents, can be handled by the proper A.I. system (with proper training of course). A paralegal/claims professional reviews the draft documents, and then a lawyer can finalize them, and continue to focus on tasks that advance a resolution of the matter as quickly as possible: possibly taking a deposition, negotiating with opposing counsel, prepare for trial, etc.

### **Technology Provider Role**

The technology provider, whether it is a consultant or SaaS A.I. company, plays the “back-office” role, serving to automate as many workflows as possible, effectively serving as a “pain killer” by addressing the most tedious, repetitive, and high-volume tasks that are necessary.

### **III. New “Threats” Are Arising Every Single Day Leading to Increased Pressure on Carriers and Providers**

The massive increase of consumer legal demands filed against corporations, primarily made possible by self-serve/assisted consumer complaint resolution platforms (such as Fairshake and donotpay), have had a significant effect on corporate legal departments’ bandwidth constraints. These sites, which take a portion of any recovery and hence nothing to lose for the consumer, are constantly targeting large corporations against which they will file complaints, arbitration demands, refund requests, etc. on all sorts of matters. Touting as being the “consumer’s advocate,” the volume of such filings is likely to continue to increase for the foreseeable future.

Corporate legal departments as well as their law firms faced with such new claims volumes are beginning to deploy technology and process tools. These tools not only increase speed, but also increase accuracy and consistency, which in the longer run, are more important. But perhaps the most important impact of technology solutions/tools deployed for these types of

matters, is the proper resource allocation it allows in the workflow. It prevents “brain waste” of Attorneys and legal professionals so they can focus on higher value tasks.

For additional resources on this topic and an overview of A.I.’s implications for the legal industry please refer to the attached article, **Artificial Intelligence: An Introduction to the Legal, Policy and Ethical Issues**, by James X. Dempsey, Berkeley Center for Law & Technology, August 10, 2020