

American College of Coverage Counsel 2024 Insurance Law Symposium

University of Minnesota Law School
Minneapolis, MN
November 15, 2024

The Power (and the limits) of AI

Michael Levine, Hunton Andrews Kurth LLP

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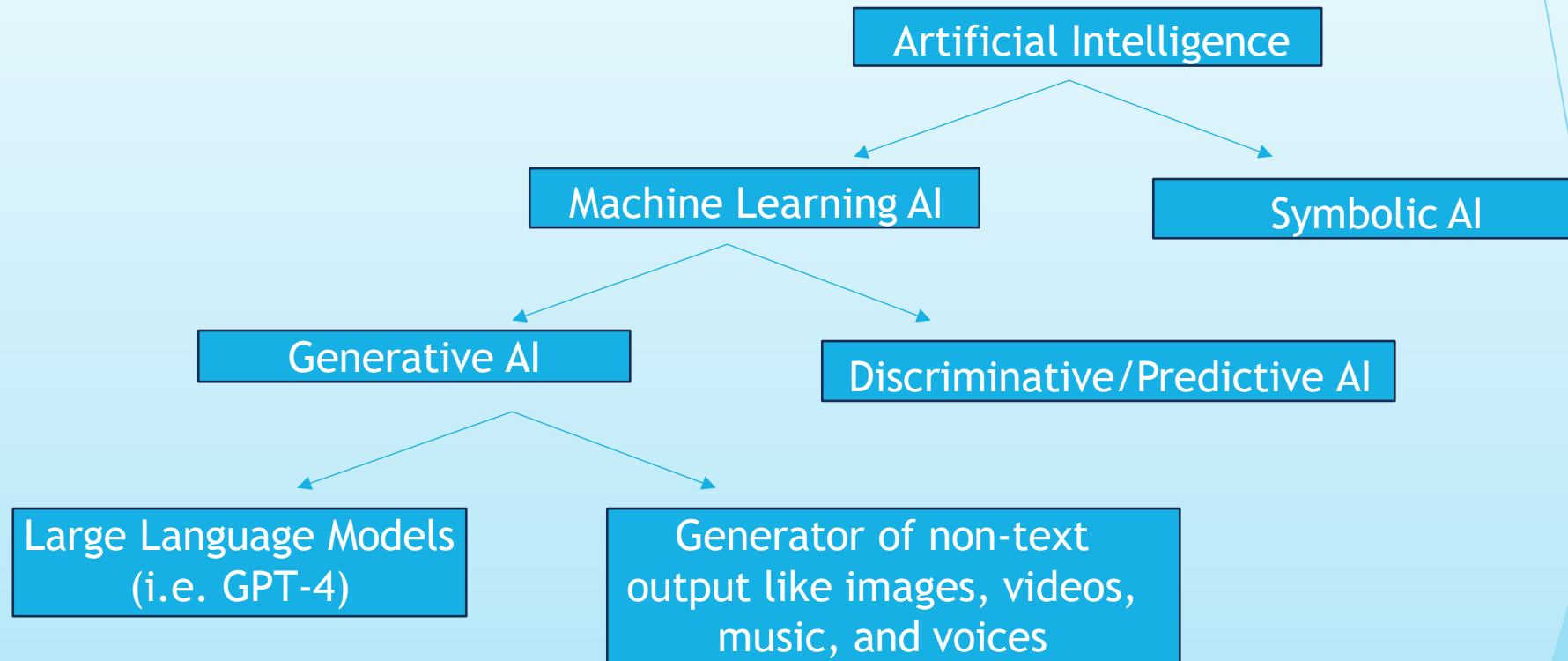
Kate Middleton, ECOLAB

Barbara O'Donnell, McAngus Goudelock & Courie LLC

The Game Plan!

1. Introduction to Artificial Intelligence
 - A. What is AI?
 - B. A Few Key AI Issues Close to My Heart
 - i. AI and Insurance Discrimination
 - ii. AI and Insurance Lawyering
 - iii. The Future of Insurance Law and Regulation
2. Defining AI in Contracts, Practical Considerations and Pitfalls
 1. Attempts (and failures)
 2. AI in the courtroom
3. Insurance Coverage for AI Liabilities

Introduction to AI: Types of AI



Introduction to Machine Learning: Predictive AI

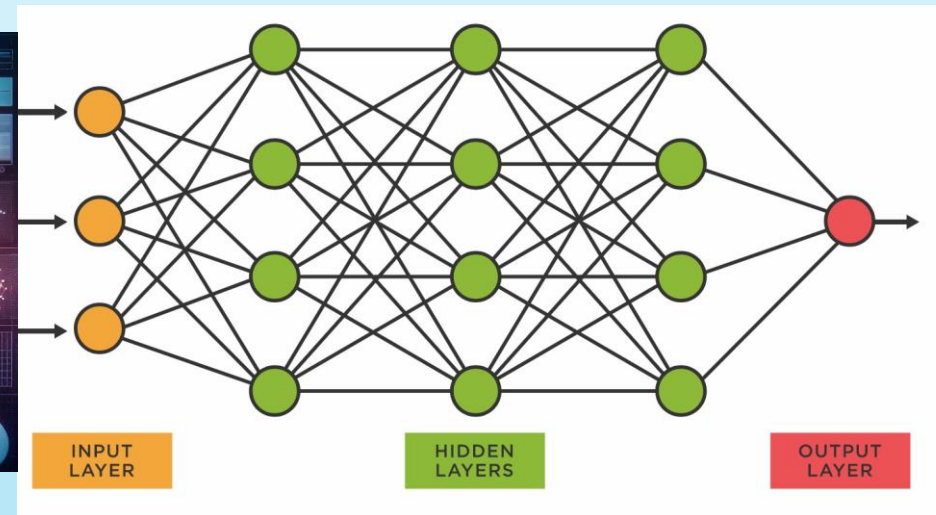
TRAINING DATA: Input Variables

Information collected at time of underwriting for past policyholders

Training Algorithm: Adjusts parameter weights in neural network based on how well model predicts target variable for each policyholder in training set.

TRAINING DATA: Target Variable

Information about ultimate claims for past policyholders



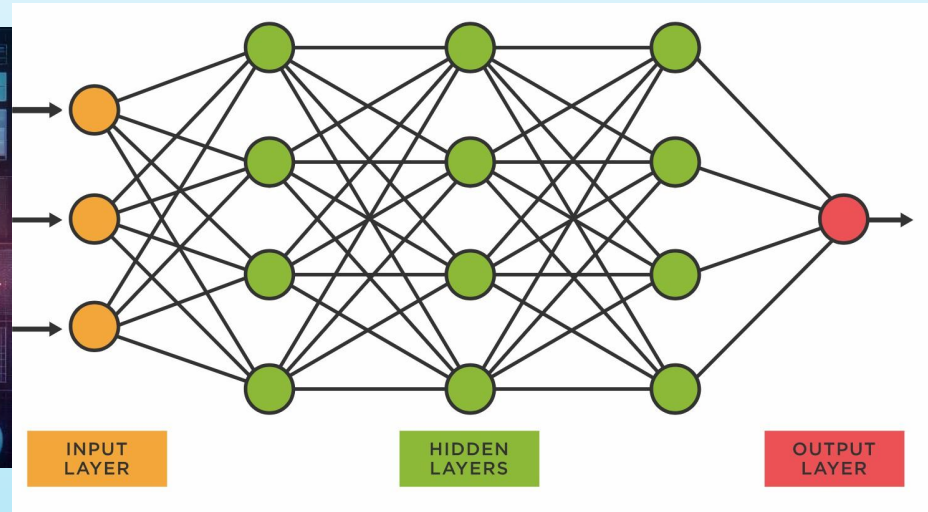
Model Architecture:
Neural Network

Introduction to Machine Learning: Predictive AI

New Customer Data:
Collected at time of
underwriting for new
policyholders

AI Target Variable Prediction:

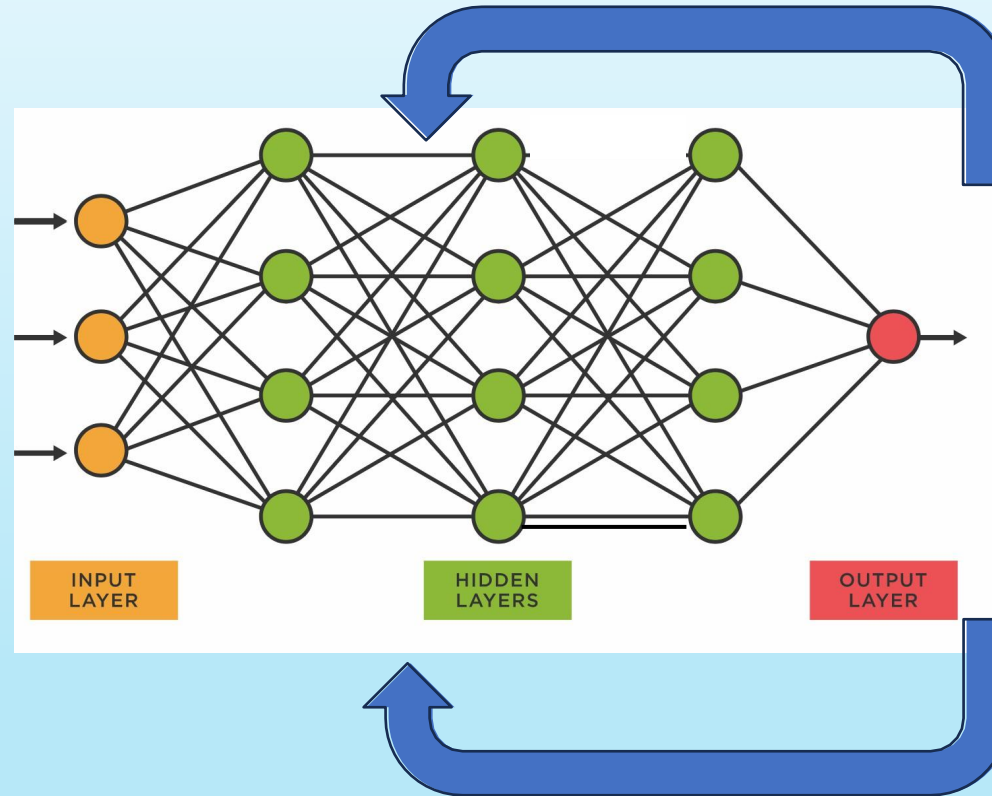
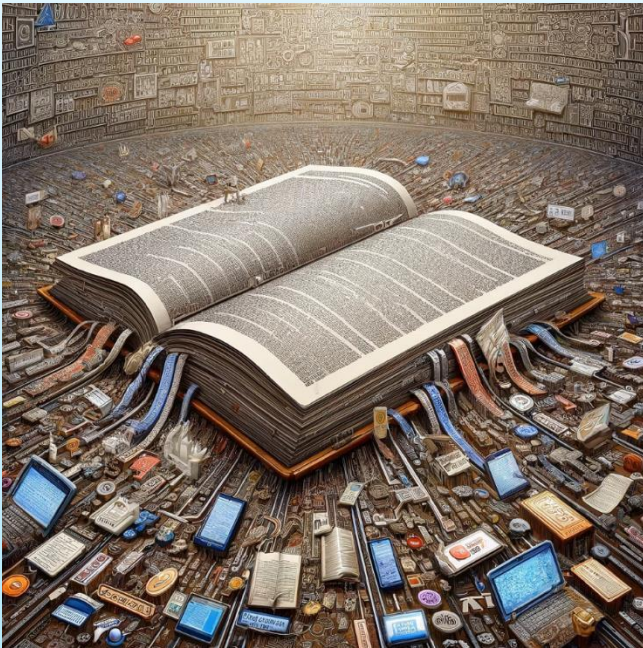
Prediction about future claims
for new policyholders



Model Architecture:
Neural Network



Introduction to Generative AI: Training a Model

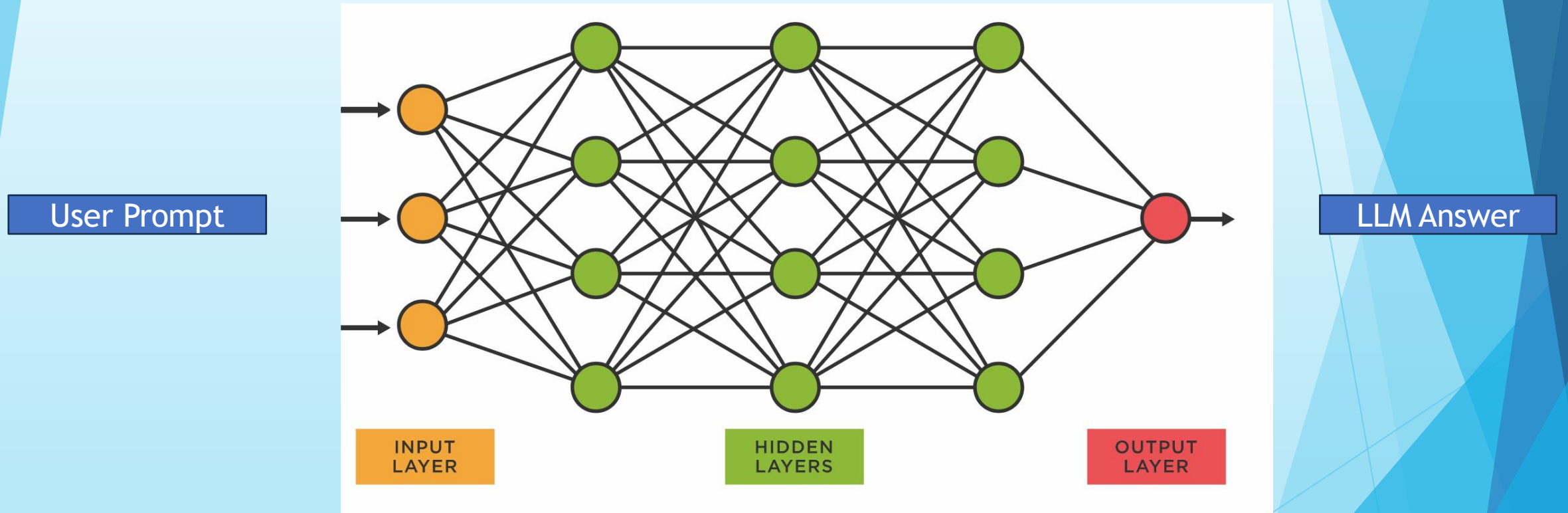


Training Algorithm:
Adjusts parameter weights in neural network based on how well model predicts next word (token) in training data.

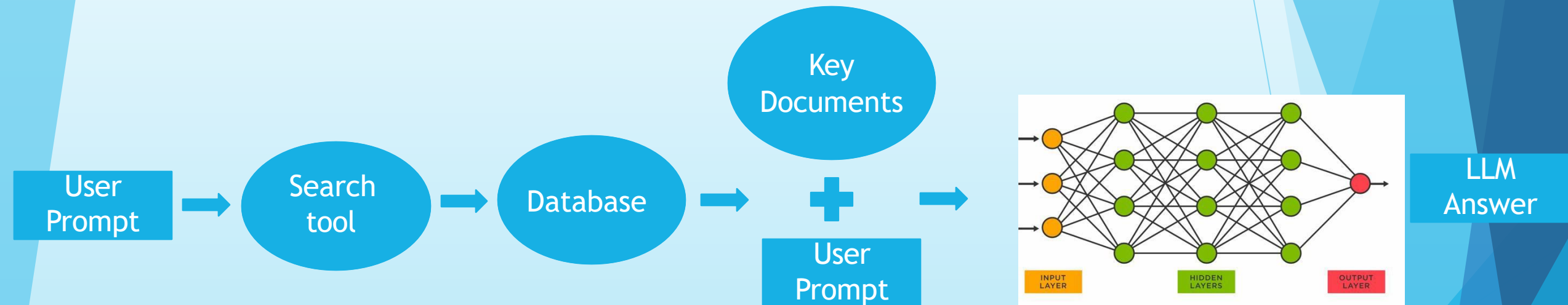
Model
Architecture:
Neural Network

Reinforcement Learning
with Human Feedback

Introduction to Generative AI: Using a Model



Introduction to Generative AI: Retrieval-Augmented Generation



AI Issues in Insurance Law and Regulation: AI and Insurance Discrimination

Insurers are in the business of prediction!

Claims rate and severity



Insurance Fraud

Risk Mitigation Strategies



Natural Disaster Prediction

AI Issues in Insurance Law and Regulation: AI and Insurance Discrimination

- Discrimination based on Legally-Suspect Characteristics
 - Disparate Impact: Use of facially-neutral information (credit score) that disproportionately harms a protected class (race)
 - Proxy Discrimination: Use of facially-neutral information (credit score) that captures the predictive power of a legally-prohibited information that cannot be captured through other metrics (race)
- Opacity of models
 - There is no way to know (currently) why many machine learning models (including neural networks) produce predictions
- Model Error:
 - Models are based on historical data, which may not reflect future trends
 - Historical data may be limited in its scope/relevant for new predictions

AI Issues in Insurance Law and Regulation: AI and Insurance Discrimination

- NAIC Model AI Bulletin: Insurers must maintain program for the responsible use of AI Systems that make or support decisions related to regulated insurance practices.
- Colorado SB21-169: Insurers must (i) maintain risk management framework to prevent unfairly discrimination and (ii) disclose to regulator information about external data sources used by insurer. Significant discretion to regulator in enforcement.
 - Proposed life insurance model: use of BIFSG to infer race for purposes of testing.
- DC Study: Using BIFSG methodology found that (i) Black drivers pay 1.46 times as much as white drivers, (ii) Black drivers' average losses 2.38 times that of white drivers, and (iii) gap in black/white premiums only partially explained by observed causal factors.
- EU AI Act: Defines high-risk systems to include those that use AI to “mediate access to and enjoyment of essential private services.” Firms using such models must (i) maintain comprehensive risk management system covering the AI system's full lifecycle, (ii) adhere to data governance requirements, (iii) engage in continuous risk monitoring and human oversight, and (v) satisfy substantive criteria for accuracy, robustness, and cybersecurity

AI Issues in Insurance Law and Regulation: Insurance Lawyering

Figure 1: Quality Distributions with and Without AI – Complaint Drafting **Figure 2: Quality Distributions with and Without AI – Contract Drafting**

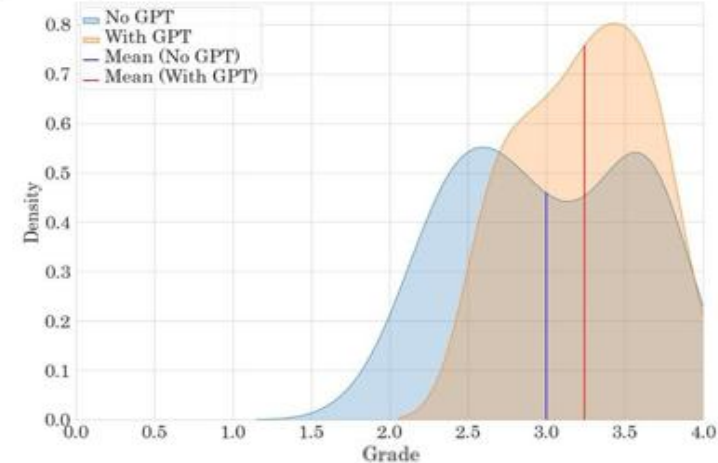
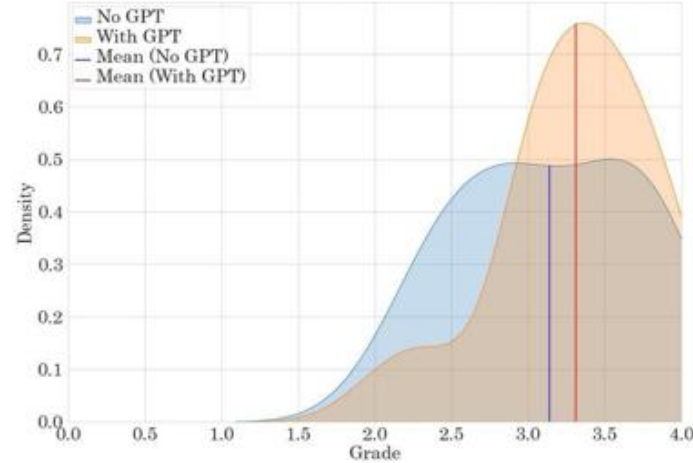
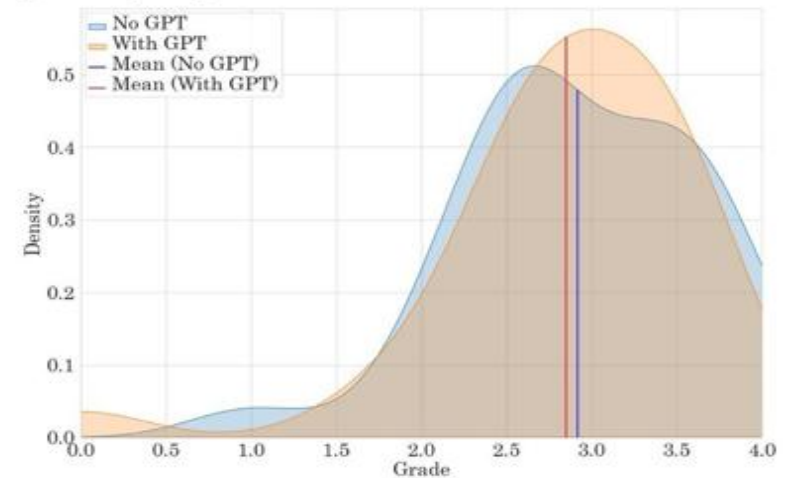
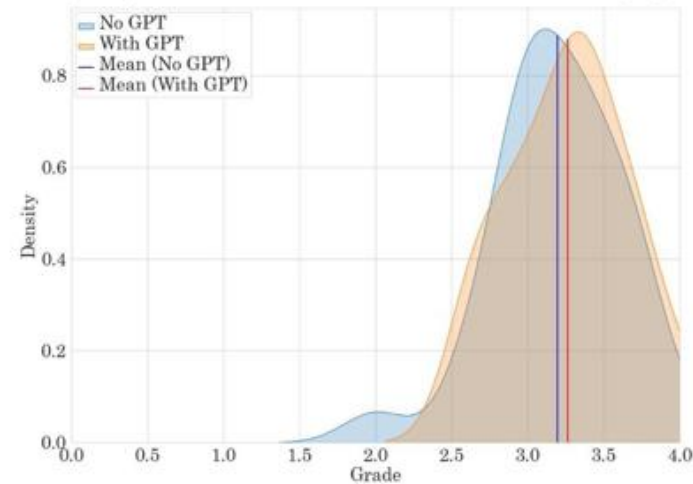


Figure 3: Quality Distributions with and Without AI – Employee Handbook **Figure 4: Quality Distributions with and Without AI – Client Memo**



Jon Choi, Amy Monohan, & Daniel Schwarcz, *Lawyering in the Age of Artificial Intelligence*, 109 MINNESOTA LAW REVIEW (forthcoming 2024)

<https://ssrn.com/abstract=4626276>

AI Issues in Insurance Law and Regulation: Insurance Lawyering

Figure 5: Time Distributions with and Without AI – Complaint Drafting

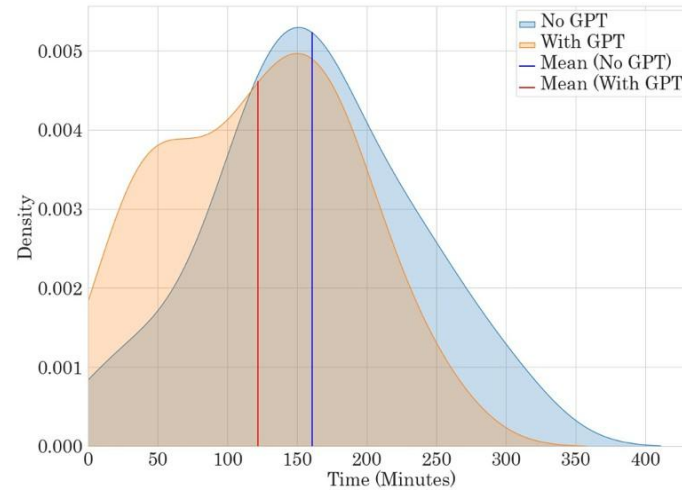


Figure 7: Time Distributions with and Without AI – Employee Handbook

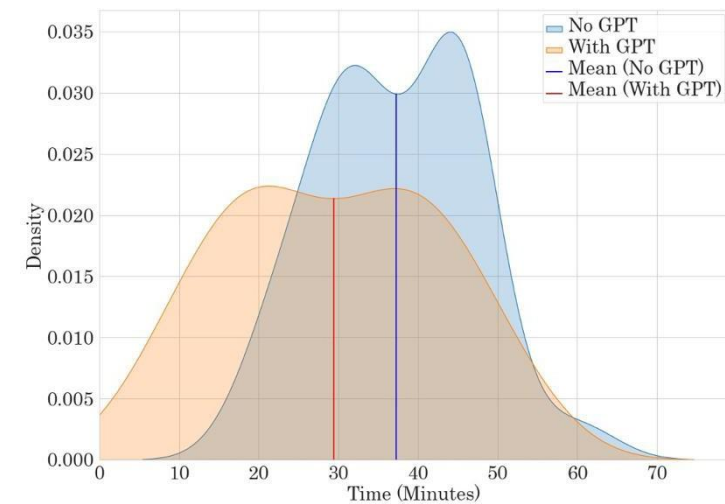


Figure 6: Time Distributions with and Without AI – Contract Drafting

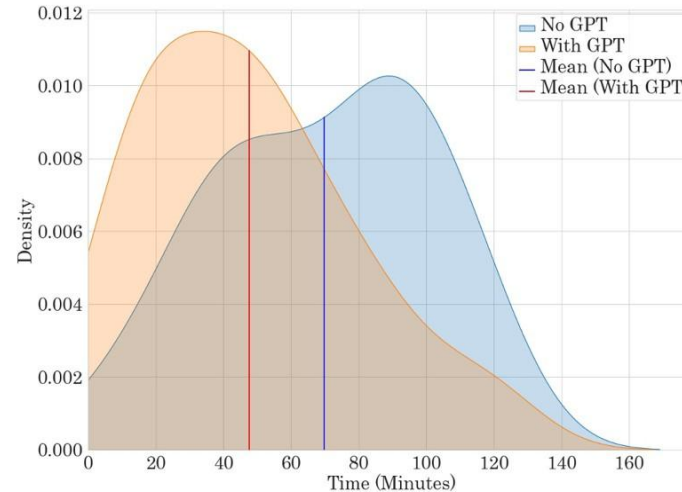
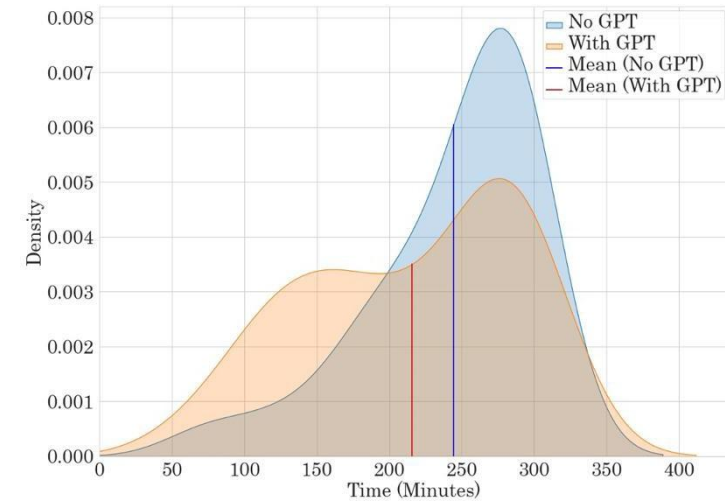


Figure 8: Time Distributions with and Without AI – Client Memo



Jon Choi, Amy Monohan,
& Daniel Schwarcz,
Lawyering in the Age of
Artificial Intelligence,
109 MINNESOTA LAW
REVIEW (forthcoming
2024)

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Issues in Insurance Law and Regulation: Insurance Lawyering

- Can an insurer in a coverage dispute introduce extrinsic evidence to clarify the meaning of otherwise ambiguous policy language, or is that language automatically interpreted against the insurer under the contra proferentem doctrine?

DS

ChatGPT 4 ✓

You

Can an insurer introduce extrinsic evidence to disambiguate the language of its insurance policy, or should the court interpret ambiguous language against the insurer without considering extrinsic evidence?

ChatGPT

ChatGPT

In insurance law, the interpretation of ambiguous language in an insurance policy typically depends on the legal principles and precedents in the jurisdiction where the issue arises. However, there are some general principles that can be considered:

1. **Contra Proferentem Rule:** This is a legal principle that often applies in cases of ambiguous language in insurance policies. Under this rule, any ambiguity in the insurance contract is usually interpreted against the interests of the party that drafted it, which in most cases is the insurer. This principle is based on the assumption that the insurer, as the author of the contract, is in the best position to eliminate ambiguities and should bear the consequences for failing to do so.
2. **Extrinsic Evidence:** Whether an insurer can introduce extrinsic evidence to clarify ambiguities in the policy language can vary. Some jurisdictions may allow it, particularly if it helps clarify the intent of the parties without contradicting the written terms of the policy. However, other jurisdictions might strictly adhere to the written contract, following the principle that the contract should speak for itself (the "four corners rule").
3. **Nature of the Ambiguity:** The court's willingness to consider extrinsic evidence might also depend on the nature of the ambiguity. If the ambiguity is considered 'patent' (obvious upon a plain reading of the text), courts might be less inclined to consider extrinsic evidence compared to a 'latent' ambiguity (not apparent from the text alone but revealed in light of external circumstances).
4. **Public Policy and Consumer Protection:** Insurance contracts are often subject to principles of public policy and consumer protection, given their importance and complexity. Courts may interpret ambiguities in favor of policyholders as a matter of public policy, especially in contexts where insurance is mandated by law (like automobile insurance).

In conclusion, while the general tendency is to interpret ambiguities against the insurer (contra proferentem), the specifics can vary based on the jurisdiction, the nature of the ambiguity, and the court's consideration of extrinsic evidence. Legal advice specific to the jurisdiction and the details of the case is essential in such matters.

AI Issues in Insurance Law and Regulation: Insurance Lawyering

- Can an insurer in a coverage dispute introduce extrinsic evidence to clarify the meaning of otherwise ambiguous policy language, or is that language automatically interpreted against the insurer under the contra proferentem doctrine?

CoCounsel

Question Presented

Can an insurer introduce extrinsic evidence to disambiguate the language of its insurance policy, or should the court interpret ambiguous language against the insurer without considering extrinsic evidence?

Answer

The authorities suggest that an insurer may be able to introduce extrinsic evidence to disambiguate the language of its insurance policy, but if the policy is ambiguous and extrinsic evidence does not resolve the ambiguity, the court will generally construe the ambiguity against the insurer.

Analysis

Several of the authorities suggest that extrinsic evidence may be permissible to resolve ambiguity in an insurance policy. For example, in *Pellegrino Food Products v. American Automobile Ins. Co.*, the court held that extrinsic evidence is not precluded in the insurance context, and that the goal is to ascertain the parties' intent. Similarly, in *Ponder v. State Farm Mutual Auto. Ins. Co.*, the court stated that New Mexico law allows for the use of extrinsic evidence to determine if an ambiguity exists or to resolve any ambiguities that are discovered.

However, many of the authorities also emphasize that if the policy is ambiguous and extrinsic evidence does not resolve the ambiguity, the court will generally construe the ambiguity against the insurer. For example, in *Burns v. Smith*, the court held that ambiguities should be construed against the insurer, and that extrinsic evidence is not necessary to resolve the ambiguity. In *Key Tronic Corporation v. Aetna*, the court stated that if extrinsic evidence does not clarify the contract, the ambiguity will be resolved against the insurer. Similarly, in *Palacin v. Allstate Ins. Co.*, the court noted that if a policy is ambiguous and extrinsic evidence is inconclusive, the ambiguity must be resolved against the insurer.

Overall, the authorities suggest that an insurer may be able to introduce extrinsic evidence to disambiguate the language of its insurance policy, but if the policy is ambiguous and extrinsic evidence does not resolve the ambiguity, the court will generally construe the ambiguity against the insurer.

Cases (43)

[Wash. Nat'l Ins. Corp. v. Ruderman, 117 So. 3d 943 \(Fla. 2013\)](#)

This case is relevant to the research request because it discusses whether Florida law allows resort to extrinsic evidence to clarify an ambiguity in an insurance policy. However, the case does not provide a definitive answer to the research request, as it ultimately concludes that the policy at issue is ambiguous and does not need to be resolved through extrinsic evidence.

AI Issues in Insurance Law and Regulation: Insurance Lawyering

- Can an insurer in a coverage dispute introduce extrinsic evidence to clarify the meaning of otherwise ambiguous policy language, or is that language automatically interpreted against the insurer under the contra proferentem doctrine?

Burns v. Smith, 303 S.W.3d 505 (Mo. 2010)

Burns v. Smith is relevant to the research request because it discusses the interpretation of ambiguous language in an insurance policy. The court in Burns v. Smith held that ambiguities should be construed against the insurer, and that extrinsic evidence is not necessary to resolve the ambiguity. However, the case does not directly address whether an insurer can introduce extrinsic evidence to disambiguate the language of its policy.

DS You

 Burns v Smith.docx
Document

Summarize this case, with a focus on whether it addresses the question of whether an insurer can introduce extrinsic evidence to disambiguate the language of its insurance policy, or whether the court should interpret ambiguous language against the insurer without considering extrinsic evidence?

 ChatGPT

In the case of Burns v. Smith, the court focused on the interpretation of ambiguous language in an insurance policy. The Supreme Court of Missouri held that ambiguities in insurance policies should be resolved in favor of the insured, following the doctrine of "contra proferentem." This doctrine is applied more rigorously in insurance contracts than in other types of contracts. The court decided against using extrinsic evidence to determine the parties' subjective intent, emphasizing that insurance policies should be interpreted according to the understanding of an average person. Consequently, the court did not support the insurer's introduction of extrinsic evidence to disambiguate policy language, reaffirming the principle of interpreting ambiguities against the insurer.

CoCounsel



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AI Issues in Insurance Law and Regulation: Insurance Lawyering

- Can an insurer in a coverage dispute introduce extrinsic evidence to clarify the meaning of otherwise ambiguous policy language, or is that language automatically interpreted against the insurer under the contra proferentem doctrine?

CoCounsel  ChatGPT4



You

Please provide direct quotations from the case substantiating your conclusion that the court refused to consider extrinsic evidence to clarify the meaning of ambiguous policy language.



ChatGPT

The court in *Burns v. Smith* clearly indicated its position against using extrinsic evidence to clarify ambiguous language in an insurance policy. The following quotes from the case substantiate this conclusion:

1. "Farmers argues this Court should abandon its settled objective approach and instead adopt a standard under which a court must look at extrinsic evidence such as affidavits and try to determine the parties' subjective intent before it may resolve ambiguities in favor of the insured" [7]. This statement shows that the insurer, Farmers, requested the court to consider extrinsic evidence, but the court maintained its objective approach.
2. "When there is an ambiguity insureds are entitled to a resolution of that ambiguity consistent with their objective and reasonable expectations as to what coverage would be provided... A court therefore will not resort to extrinsic evidence [offered] to demonstrate their positions of coverage and non[-]coverage" [7]. This excerpt explicitly states the court's refusal to consider extrinsic evidence in resolving ambiguities.
3. "Such an ambiguity is patent rather than latent and may be resolved within the four corners rather than by means of extrinsic aids. Because the ambiguity is in an insurance contract it is to be resolved in favor of the insured and against the insurer" [7]. Here, the court emphasizes resolving ambiguities based on the text of the contract itself, without recourse to extrinsic evidence.

These quotes demonstrate the court's firm stance on interpreting insurance policy language based on its ordinary meaning as understood by an average person, without

Other Key AI Issues for the Future of Insurance Law and Regulation

- AI and Insurance Contract Drafting, Communication, and Interpretation
 - Interpreting insurance contracts using AI
 - Turning insurance contracts into computable contracts
 - AI-based insurance contract readers
- Insurance Coverage for AI Liability
 - AI liability risk is still hugely unsettled
 - Silent AI coverage may be akin to silent cyber coverage
 - Development of AI Coverages hampered by limited risk data and unsettled liability regime.

Defining AI



Common Goal

- Insurers and Policyholders want the same thing . . .

Contractual certainty!

Is the definition capable of understanding and use by ordinary people?



AI Insurance Products: AI Exclusions

MUSICAL COMPOSITION AND GENERATIVE ARTIFICIAL INTELLIGENCE EXCLUSION

Media incident means the following offenses committed by you anywhere including the internet, electronic data, and printed material, **except in your advertisement or in content created or posted for any third party that you created using generative artificial intelligence in performance of your services:**

PI-IT-036 (09/23)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MUSICAL COMPOSITION AND GENERATIVE ARTIFICIAL INTELLIGENCE EXCLUSION

This endorsement modifies and is subject to the insurance provided under the following:

INTEGRATED TECHNOLOGY E&O AND CYBER RISK COVERAGE FORM

I. SECTION II. DEFINITIONS. OO. **Media Incident** is deleted in its entirety and replaced with the following:

Media incident means the following offenses committed by you anywhere including the internet, electronic data, and printed material, except in your advertisement or in content created or posted for any third party that you created using generative artificial intelligence in performance of your services:

1. Infringement, misappropriation, dilution, or violation of any right to a trademark, trade name, service mark, service name, trade dress, title, slogan or logo;
2. Copyright infringement, plagiarism, or misappropriation of ideas under an implied contract;
3. Invasion of an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of likeness, and public disclosure of private facts;
4. Domain name infringement or improper deep-linking or framing;
5. Infringement of intellectual property rights in computer software, including its source code or any other content of a software program. However, coverage for such infringement shall not apply if your infringement is a result of reverse engineering of computer code, methods, or processes; and
6. Libel, slander, product disparagement, trade libel or any other form of defamation, but only on your own electronic chat rooms, bulletin boards, social media channels, or similar interactive sites.

II. SECTION II. DEFINITIONS, is amended to include the following:

Generative artificial intelligence means content created through the use of any artificial intelligence application, tool, engine, or platform.

III. SECTION III. EXCLUSIONS, is amended to include the following:

Musical Composition

Notwithstanding anything to the contrary in **Section III. EXCLUSIONS,** paragraph O. **Infringement of Intellectual Property Rights or Laws,** any actual or alleged disseminations or use of any musical composition or work on the internet, including any website or social media site of yours.

All other terms and conditions of this policy remain unchanged.

PI-IT-036 (09/23)

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Insurance Products: Coverage Applications

Estimate the total percentage of revenue for the following services and work.

Artificial Intelligence Software/Services %

2. Does the Applicant produce original content as part of their business such as advertising ideas, content creation services, logo/brand development?

b. If yes, does the Applicant utilize Generative AI in producing original content?

PHILADELPHIA
INSURANCE COMPANY
A Member of The Philadelphia Group

One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004

INTEGRATED TECHNOLOGY FAQ AND CYBER RISK APPLICATION

SECTION III - SERVICE/PRODUCTS ALLOCATION/DESCRIPTION OF OPERATIONS (to be completed by all Applicants)

1. Description of operations:

Estimate the total percentage of revenue for the following service and work.

| Technology – Software & Services | % | Computer/Electronics, & Hardware | % |
|-------------------------------------------|---|----------------------------------------------|---|
| All Software Noted Below | | Access/Spacenet Electronic Components | |
| Installed on Customer Systems | | Circuit Board or Semiconductor Manufacturing | |
| Hosted Remotely (SAAS) | | Computer System Manufacturing | |
| Application Service Provider | | Computer Peripheral Device Manufacturing | |
| Artificial Intelligence Software/Services | | Computer Mainframe and Peripherals | |

| | | | |
|-----------------------------------------------------------|--|-----------------------------------------|--|
| Billing/Payment Processing/ E-commerce | | Electric Vehicle Electronic Comp | |
| Storometric Software or Services | | Electronic Equip | |
| Blockchain Based Technology | | Infrared Control Instrument Manuf. | |
| Co-location without Managed Services | | Office Electronic | |
| Custom Software Development | | Copiers, Printers Optical Instrument | |
| Data Processing & Outsourced Services | | Recycling/Chiller/Cooling | |
| Data Aggregation/Broker/Customer Targeting | | Telecommunication | |
| Domain Name Registration | | Value-Added Res. Hardware | |
| Emergency/IT Call Routing Software | | Other (describe): | |
| IT Managed Service Provider (manage customer IT security) | | Distribution & IT Computer Equip | |
| IT Consulting | | Electronic Comp | |
| IT Staff Augmentation | | Value-Added Res. Hardware | |
| Mainframe Phone Application Development | | Value-Added Res. Hardware | |
| Network Security Software and Services | | Value-Added Res. Other (describe): | |
| Pre-Packaged Software Development/sales | | Telecommunications | |
| System Design and Integration | | All Installation | |
| Social Media Production/Services | | Performed by Subcontractors | |
| Platform | | Audio Visual Integ. | |
| Technical Support/Repair & Maintenance | | Alarm Monitoring | |
| Training & Education | | Alerts Monitoring | |
| Web Portal | | Data Transmittal | |
| Website Hosting | | Internal Service | |
| Website Construction and Design | | Local & Long Dist. Telecommunication | |
| Wireless Communication Services | | Telecommunication | |
| Architectural/Engineering Services (describe services) | | Voice Conference | |
| Business Process Outsourcing | | VDP Phone Sys. | |
| Export Related Services or Teams | | Wholesale/Retail | |
| Legal Services | | Alarms/Towers | |
| Logistics, Freight, Fulfillment | | Other (describe): | |

SECTION VI - QUALITY CONTROL PROCEDURES (to be completed by all Applicants)

1. Who is responsible for handling insurance related matters:

- Does the Applicant have policies and procedures in place to respond to customer complaints? Yes No
- Does the Applicant utilize an escalation procedure to respond to customer complaints? Yes No
- Include which of the quality control procedures are in place. (select all that apply) Alpha Testing Beta Testing Business Continuity Plan Customer Service via E-Mail Formalized Training for New hires Post-sale Development Vendor Certification Process Written Quality Control Guidelines Other: _____
- Does the Applicant have a disaster recovery/business continuity plan? Yes No
- How often do they test it? Daily Weekly full incremental backups Quarterly full backups Other: _____
- Are backup files stored in a secure location? Where: Onsite Offsite Secondary backup hosted Other: _____

SECTION VII - SUBTRACTED WORK, USE OF SUPPLIERS AND OUTSOURCED MANUFACTURING (to be completed by all Applicants)

- Does the Applicant sub-contract any professional services or manufacturing to fulfill commitments to clients? Yes No
- If yes, what percentage does the Applicant subcontract? % Yes No
- Does the Applicant utilize a standard subcontract agreement? Yes No
- Does the Applicant require evidence of General Liability from subcontractors? Yes No
- Does the Applicant require evidence of Errors & Omissions Insurance from subcontractors? Yes No

SECTION VIII - MEDIA (Complete only if applying for Media Liability)

| Business Activities or Website Contents | % of Revenues | Business Activities or Website Contents | % of Revenues |
|-----------------------------------------|---------------|----------------------------------------------------------|---------------|
| Advertising/Marketing for Others | | Music or Sound Clips | |
| Social Media Services | | Sexually Explicit Material | |
| File Sharing | | Seventeenth or Copyrights | |
| Interactive Gaming | | Video Production | |
| Movie/Commercial Production | | Other (describe): | |
| Website/Social Media Content | | Open Source | |
| Content created by Applicant | | Open Source Code originated by Applicant | |
| Content supplied by Client | | Open Source Code created by others and used by Applicant | |
| Domain Name Registration | | | |

- If the Applicant distributes computer systems with software included, are the appropriate license agreements supplied with each system? NA Yes No
- Does the Applicant produce original content as part of their business such as advertising blogs, content creation services, logo/sign design/etc?
a. If yes, please describe: NA Yes No

- b. Does the Applicant utilize Generative AI in producing original content? NA Yes No

PAT-CYBER-NEWAPP (2/24)

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PAT-CYBER-NEWAPP (2/24)

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Will the Definition Stand Up to Cross-Examination?

People v. Burrus, 2023 N.Y. Slip Op. 23298 (N.Y. Sup. Ct. 2023)

- Discusses the definition and application of AI in the context of DNA analytics.
- Same expert; different opinion dependent upon definition . . .

"Dr. Matthews testified that FST is an artificial intelligence system when defining AI more broadly to include automated decision-making systems that are used to make big decisions about people's lives."

But . . .

"During cross-examination, Dr. Matthews testified that FST would not fall under a narrower definition of AI as it does not use machine learning, neuronets or decision trees and does not have an aspect of sensing the environment."

Some Early AI Lawsuits

Denial of Insurance Benefits

- *Kisting-Leung v. CIGNA Corp.* (E.D. Cal., filed Aug. 2023)
 - Alleging insurer relied on AI to deny 300,000+ claims based on avg. 1.2 second review without physician oversight.
- *Lokken v. UnitedHealth Group* (D. Minn., filed Nov. 2023)
 - Alleging insurer used its nH Predict AI Model to deny extended care claims for elderly patients and to overrule physician determinations.

AI in the Courtroom

- *People v. Burrus*, 200 N.Y.S.3d 655 (Sup. Ct. Kings Cty. 2023)
 - Acknowledging the difficulty in defining AI
- *People v. Wakefield*, 195 N.E.3d 19 (N.Y. 2022)
 - Acknowledging the “legitimate and substantial questions concerning due process as impacted by cutting edge science.”
 - “Given the exponential growth of . . . artificial intelligence, to embrace the future we must assess, and perhaps reassess, the constitutional requirements of due process that arise where law and modern science collide.”

Privacy

- *P.M. v. OpenAI LP*, Case No. 3:23-cv-3199 (N.D. Cal., filed June 2023)
 - An anonymous group of plaintiffs filed suit against OpenAI and Microsoft, Inc. alleging that OpenAI stole private and personal information belonging to millions of people by collecting publicly-available data from the Internet to develop and train its generative AI tools—including ChatGPT (an AI text generator), Dall-E (an AI image generator), and Vall-E (an AI speech generator).

Tort

- *Walters v. OpenAI*, Case No. 23-cv-03122 (N.D. Ga., filed June 2023)
 - Radio host and public figure Mark sued OpenAI for libel after its ChatGPT generated a fabricated complaint containing allegations against Walters for fraud and embezzlement.

Trademark

- *Getty Images (US), Inc. v. Stability AI, Inc.*, Case No. 1:23-cv-00135 (D. Del., filed Feb. 2023)
 - Getty alleges that Stability copied and processed millions of images and associated metadata owned by Getty

Right of Publicity and Facial Recognition

- *Flora v. Prisma Labs, Inc.*, Case No. 3:23-cv-00680 (N.D. Cal., filed Feb. 2023)
 - Putative class of Internet users alleges that Prisma Labs, Inc.’s portrait-generating application, Lensa, scanned the facial information of Internet users without their consent, in violation of Illinois’ data privacy statute.

AI Washing

- AI washing encompasses not just outright false claims, but also overly generalized disclosures that do not actually help investors.
- The SEC has specifically cautioned against:
 - boilerplate AI disclosures not particularized to the company;
 - disclosing the use of AI models when the underlying technology is not actually AI-driven; and
 - AI-related projections that do not have a reasonable basis.
- David D’Agostino v. Innodata Inc., (D.N.J. Feb. 2024)
 - Class Complaint alleging AI washing
 - Innodata is a global data engineering company; represents that it provides AI-enabled software platforms
 - In Feb. 2024, Wolfpack Research published a report that revealed:
 - “Innodata’s AI is really ‘smoke and mirrors’ and that the company’s marketing claims are like ‘putting lipstick on a pig’”
 - Stock dropped 30.5% in 24 hours

“AI washing” (along the lines of “Greenwashing”) is the new buzzword to describe a company overexaggerating its use of AI in an attempt to attract investors.

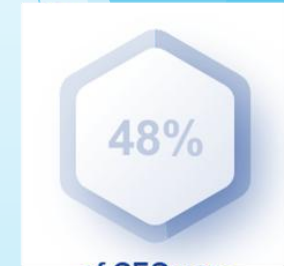
Top AI risks

1. **Bias & Explainability:** Complex AI models makes it challenging to explain their decisions. AI systems may inadvertently reflect and perpetuate biases present in training data.
2. **Quality Concerns & Hallucination:** Produces plagiarized content due to limited training data or a lack of understanding of originality.
3. **Overreliance:** The growing capabilities of AI raise the concern of excessive reliance without sufficient critical evaluation.
4. **Infrastructure & Third Parties:** Companies relying on external parties may face risks associated with the reliability, security, and continuity of those services. Internal resources require investments in talent and data storage.
5. **Regulatory:** Rapid advancements in AI may outpace the development of appropriate regulations, leaving companies navigating uncertain legal landscapes.
6. **Data Privacy & IP:** AI's complex algorithms and data usage fuel IP and data privacy risks. Mass data usage challenges the definition and protection of rights, ownership, and liability.
7. **Crime:** Gen AI tools can be misused for social engineering attacks, enabling financial scams and the creation of sophisticated fake identities & deep fakes.
8. **Liability:** How to determine which party is at fault when AI makes a decision?
9. **Content moderation:** The diversity and unpredictability of generated outputs makes it difficult to establish clear content moderation guidelines.
10. **Data accuracy:** Biased, incomplete, or erroneous data leading to inaccurate outcomes, amplifying misjudgments and perpetuating disparities in decision-making processes. Datapoisoning.
11. **Ethics:** AI applications may raise ethical dilemmas, such as the use of facial recognition, surveillance, or autonomous decision-making in sensitive areas like healthcare and criminal justice.
12. **Workforce Disruption:** As more companies adopt AI applications to automate their process, there is an increased risk of job displacements and unemployment.

CEOs are grappling with the adoption of generative AI, primarily due to concerns over data and potential risks related to bias, ethics, and security...



of CEOs are concerned about data security



of CEOs are worried about bias or data accuracy

Source: [IBM Study - June 2023](#) (+3K CEOs in 30+ countries)

...But most organizations are still in the early stages of implementing risk programs



of organizations report having a dedicated team in place for evaluating risk and implementing **risk mitigation strategies** as part of their overall generative AI strategy.

How does AI impact your risk profile?

Errors & Omissions

- Complexity and Unpredictability: AI adds complexity, making it hard to foresee or explain errors. Its adaptability can amplify existing issues, creating new challenges for companies.
- Data Bias and Ethical Concerns: AI relies on data, risking biased decision-making. Companies face exposure if AI perpetuates biases, leading to ethical concerns and legal consequences.
- Regulatory Compliance and Legal Liability: Evolving AI regulations pose risks. Non-compliance may result in legal liability, requiring companies to navigate complex regulations and implement safeguards effectively.

Management Liability

- Decision-Making Challenges: Management liability is exacerbated by AI, introducing complexities in decision-making. AI's adaptability amplifies existing issues, demanding effective management strategies.
- Ethical Risks and Reputation: AI-driven decisions can pose ethical challenges, impacting a company's reputation. Managing liability involves addressing ethical concerns tied to AI, mitigating potential reputational damage.

Casualty

- Personal & Advertising Injury : Managing risks tied to potential harm or rights infringement demands a nuanced approach.
- Accidents and Safety Concerns: The use of AI may lead to accidents and safety concerns, impacting casualty liability. Companies must address these risks to maintain a safe environment and minimize potential liabilities.
- Liability in Autonomous Systems: AI's role in autonomous systems raises liability risks. Companies need to navigate the evolving landscape, ensuring safety measures and addressing potential legal consequences tied to casualties and general liability.

Cyber

- Sophisticated Cyber Threats: AI introduces advanced capabilities for cyber attackers, leading to more sophisticated and unpredictable threats. Requires new & robust security measures to safeguard sensitive data.
- Adversarial AI Vulnerability: AI in security systems opens the door to adversarial AI, where attackers manipulate algorithms. This creates new risks, requiring companies to defend against AI-targeted exploits to prevent unauthorized access or data breaches.
- Privacy and Ethical Concerns: AI's data-driven nature raises privacy and ethical challenges. Companies must manage evolving data protection regulations, address ethical concerns, and ensure responsible AI practices to mitigate legal and reputational risks.

Employment Practices

- AI in Hiring and Workplace Dynamics: Integration of AI in employment practices, such as hiring algorithms, introduces complexities.
- Employee Monitoring Challenges: Requires balancing the benefits of performance insights with privacy considerations is crucial. Companies need clear policies to address these challenges and minimize liability in employment practices.
- Algorithmic Bias and Fair Treatment: The use of AI in HR processes may inadvertently perpetuate bias. Companies must address algorithmic bias to ensure fair treatment, aligning with evolving regulations.

Is AI already creating insurable claims?

As of September '24, at least 194 lawsuits involving Gen AI have been filed,* out of a total of 383 lawsuits involving all AI**

1. Due Process / Civil and Constitutional Rights

- Denial of parole based on AI assessment
- AI use in court decisions

2. Privacy Violations

- Unlawful surveillance (Clearview AI)
- Unlawful voiceprint collection (fast-food drive-thru)

3. Intellectual Property (IP) Infringement

- Use of copyrighted images/text for AI training
- Examples: Getty Images v. Stability AI, NY Times v. Microsoft

4. Discrimination

- AI algorithms discriminating based on race, gender, etc.
- Example: Lawsuits against Facebook

5. Economic and Financial Losses

- Business interruptions, inaccuracies in projections
- Examples: Zillow's home-flipping program, trading algorithm errors

6. Bodily Injury / Property Damage / Death

- Accidents caused by self-driving cars
- Industrial robots causing injuries

7. Defamation

- AI-generated false information damaging reputations
- Example: Radio host lawsuit against ChatGPT

8. Other

- Misleading AI capabilities, undisclosed AI use

*<https://blogs.gwu.edu/law-eti/ai-litigation-database/>

**<https://app.powerbi.com/view?r=eyJrIjoieTE1MzliYjgtYjAzZS00Y2YzLWJkOTA0ODliNmY5YmNjNmU5IiwidCI6ImU5YzQ5M2QzLWE4NzktNDJkNi1iZWU1LTAxMmVjOTA5NTU1MiIsImMiOjF9>

Potentially Applicable Coverages

Directors and Officers (D&O)

- Mismanagement of AI in company processes

Errors and Omissions (E&O)

- Algorithmic bias and system failures

Media Liability

- Claims (e.g., defamation) following AI-generated content

Commercial General Liability (CGL)

- Injury to others from AI products / services

Property Policies

- “All-risks” covered due to “physical” damage

Product Liability

- Harm to others due to AI defects / malfunctions

Employment Practices Liability (EPL)

- Discrimination bias (promotions / wrongful terminations)

Cyber Liability

- Privacy breaches and digital threats

Intellectual Property (IP)

- Enforcing IP rights due to AI infringement

Questions?