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Carrier Management

**AI AND SOCIAL
INFLATION:
HOW LAWYERS ARE
USING TECHNOLOGY**



Defendants, Insurers Risk Falling Behind on AI for Litigation

Executive Summary: With different incentives driving their investments, plaintiffs' lawyers will likely be quicker than defense attorneys to adopt technology, including generative AI tools, to assess case potential, speed up legal research, write demand packages and more. While neither side has tapped the full potential yet, examples of tech companies giving AI-driven support to personal injury lawyers are already popping up. In addition, litigation finance firms are playing "Moneyball" with predictive analytics and machine learning to value cases, defense experts warn.

By Allen Laman



As generative artificial intelligence drives the innovation of legal tools, insurance defense experts are wary that failing to keep up with the plaintiffs' bar's technological advances could lead to a competitive disadvantage.

"And in the insurance world, that becomes real, and that becomes real money," said Robert Tyson, managing partner at the Tyson & Mendes law firm and author of "Nuclear Verdicts: Defending Justice For All."

Carrier Management recently interviewed Tyson and two other insurance defense experts about the impacts generative AI could have on insurers. Their perspectives were all

unique, but a cautionary thread linked them together.

"If we just talk about the tech at a very high level, the easiest way of thinking about it is that the worst-case scenario, in my mind, is that the plaintiff uses it and the defense bar does not," said Taylor Smith, a consultant to insurance defense professionals. "So, the risk for me is falling behind. I think this is one of those scenarios where keeping up is probably the biggest challenge."

How Actionable Data Could Affect the Legal Process

Smith is president of Suite 200 Solutions, a consulting practice that improves how claims organizations, law firms, and

service and technology firms do business with each other. He believes legal technology will evolve from automating tasks to producing actionable data. Smith said that traditionally, legal practitioners on both the plaintiff and defense sides have adopted new technology slowly.

Nevertheless, groundbreaking tech tools have been built in recent years that can quicken legal research, automate legal answers and write legal briefs.

"These are really big changes," Smith said, "but the industry has been slow to adopt them. And I think that what's probably more interesting to me is the way that it's going to be used in the next five years versus the way it's been used in the last 15."

He believes that better use of historical data will be used to better manage legal outcomes. Settlement values will be accurately predicted earlier in cases than can be done now, and Smith thinks that will sway how much money is invested to defend a particular case and the tactics used to reach a resolution.

State court data will “come together in a much more meaningful way,” he said, leading to a granular understanding of venue risk. Smith predicts the data will also lead to a better understanding of plaintiffs’ attorneys’ capabilities.

“That means that if you’re an insurance company and you’re managing litigation, and you have a portfolio of 3,000 litigated files, it matters to you who you’re facing,” Smith said. “And the ability to understand how many times that plaintiff attorney files cases, what percent of those go to trial, how long those cases last, what types of cases that plaintiff attorney is better at than others—that all matters a lot.”

Essentially, whether they can maximize the value of a case is crucial to know.

Approaches Amplified by AI

As of today, Smith believes the defense bar has “a longer way to go than the plaintiff bar.”

Smith said that the plaintiffs’ bar operates under a philosophy of shared abundance, and that this is not the case for insurance defense firms. Members of the plaintiffs’ bar get big paychecks from big settlements and may have fewer hindrances to moving quicker.

Defense attorneys face three notable hindrances, he said: They are paid by the hour, they have always been cautious and prioritize coordination when it comes to adopting new technology, and their adoption of technology is heavily influenced by the insurance carriers they work with.

“Their incentives are different,” John Burge, CEO and co-founder of SigmaSight, explained in a separate interview. “The way they get compensated translates into differences in incentives to adopt technology, particularly data and AI

technologies. So, that’s where I make the big distinction. So, you’ve got personal injury law firms eating it up.”

He continued: “Defense law firms...as a defense firm, do you want to start adopting technologies that make you more efficient when you’re already commoditized and squeezed on your hourly rates? That’s kind of like adding insult to injury, in a way. So, they’re not in a good spot to rapidly adopt technology.”

‘At an Inflection Point’

A recent study conducted by Suite 200 Solutions and the Claims and Litigation Management Alliance highlighted that as defense firms consolidate, they are struggling to attract and retain good attorneys. The survey also found that payment issues and adjustments were the top-listed “recurring friction point” for attorneys with insurance company clients. Rate issues were second.

“The big finding from the 2024 study is that the litigation industry for insurance carriers is really at an inflection point,” Smith said. He added that both insurance claims organizations and defense firms are “desperately struggling for good talent” and noted that approximately 65 percent of defense firms report being “significantly understaffed.”

That survey found that 30 percent of surveyed defense attorneys did not know if their firm was using AI. Sixty-three percent said they’re not using it, meaning just 7 percent affirmatively reported using AI. Smith explained that those who are currently using AI are using it for document summarization—and not the data prediction or analytics purposes.

Plaintiffs’ Bar Is ‘All Over It’

Tyson echoed Smith’s comments, describing the defense side as “very conservative” and “very traditional.” He also believes generative artificial intelligence is being adopted “much quicker by the plaintiffs’ bar” and those on the plaintiff side, including litigation funders.

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companies that have put holds on the use of generative AI,” Tyson said. “They don’t want to do it. They don’t want to be involved with folks that are doing it—which is the exact opposite of what our competition is doing.”

Tyson believes concerns related to privacy obligations are reasonable. But he also knows that the plaintiffs’ side also has privacy obligations and standards; “yet they’re just blowing right through it,” he said.

“The interesting thing, though, is that we shouldn’t be getting outspent on this,” Tyson said later. He said insurers should be at the forefront of technology and pointed to the massive amounts of money major insurance companies have.

“There’s no way you can get outspent,” Tyson said. “It’s just, where is your focus? And sometimes, it’s awareness. Sometimes, insurance companies don’t know that there are these opportunities out there to take advantage of technology. But it seems like the plaintiffs’ bar does know that. And they’re all over it.”

Playing ‘Moneyball’

In a June 2023 press release, a company named EvenUp billed itself as “the market leader in AI-driven support for personal injury lawyers.” According to the release, EvenUp turns raw case files, such as medical records, bills and police reports, into AI-generated legal documents for injury lawyers.

These demand packages value what injury cases are worth, “enabling injury attorneys to expedite settlements and secure the full compensation their clients

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Robert Tyson, Tyson & Mendes

rightfully deserve,” the release said.

“The AI revolution promises to drive massive productivity gains and allows great entrepreneurs to reimagine the way work is done. EvenUp is a fantastic example of these principles applied to personal injury law,” Sameer Dholakia, partner at Bessemer, said in the press release. “Their AI-native solution will provide superpowers to lawyers and

How Legal Tech Can Be Used to Defend Lawsuits

- Historical data may be used to better manage legal outcomes.
- Settlement values may be accurately predicted earlier in cases.
- State court data may come together to create a granular understanding of venue risk.
- Data may lead to a better understanding of plaintiffs’ attorneys’ capabilities.



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paralegals, making them factors more productive and yielding fairer settlements for their clients.”

EvenUp isn’t the only technology company in the legal space.

- Whippy’s website says it can streamline intake experiences and collect “documents, pictures and automate your intake requests all via SMS which has a 3 min average response time.”
- Legalist shares on its website that its “litigation funds have focused on using technology to invest in meritorious litigation claims to generate attractive risk-adjusted returns.”
- FileVine describes itself as a complete legal tech stack supercharged by AI.

Burge said the plaintiffs’ bar and litigation finance companies are playing “Moneyball.”

Predictive analytics and machine learning can enable them to better pick and value cases, he said, and better inform



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negotiations. Combine that with the fact that the plaintiffs’ bar has always been better at data sharing than the defense bar, and “the bottom line is P/C [insurance] is falling way behind,” he said. “And there aren’t a lot of incentives driving them to catch up right now.”

Tyson is not aware of defense firms and attorneys implementing similar technology. Generative AI is being used on the defense side when it comes to research, he said, and there’s talk of increasing use in other ways. He bets individual attorneys are carefully using some AI, but he believes use on the plaintiffs’ side is far beyond that.

“I really think it’s kind of waiting for some things to develop a little bit,” Tyson said. “Me, personally, we’re waiting on West Law and Lexis Nexis—and they’re working on this stuff—to come out with the next greatest, best thing. I personally am waiting for an incredible case management system that’s using AI.”



Legal Tech for the Defense

Experts who spoke to *Carrier Management* for the accompanying article are affiliated with technology companies that can assist defendants and their insurers.

NaVel by Schaefer City Technologies

Tyson is the chief business development officer of Schaefer City Technologies, an insurance technology company that, according to its website, uses predictive analytics embedded in insurance software and applies artificial intelligence directly to insurance claims to avoid runaway verdicts.

Schaefer City Technologies' NaVel product matches the traits of nuclear verdicts to files to "determine the likelihood your case could go nuclear. Our NaVel software is the first-ever to provide an insurance claim prediction for Nuclear Verdicts," according to the website.

During his interview, Tyson shared that data and research show that nuclear verdicts are not just happening to new defense lawyers or insurance professionals.

"They're happening to the most experienced defense lawyers and some of the most experienced insurance professionals," he said. "They're slipping through. They're not seeing it. They're not seeing the patterns."

NaVel is designed to be a second set of eyes to alert adjusters when files need extra care. A portal also allows management to see all the files.

SigmaSight

According to its website, SigmaSight was created "to help litigation claim professionals and defense counsel level the playing field. Powered by machine learning, generative AI, and advanced modeling, SigmaSight's Suite of developing products will give defense teams the tools and information they need to respond."

In his interview, CEO and Co-Founder John Burge said everything his company does is centered around negotiation.

SigmaSight offers a suite of negotiation solutions for litigated files. The company offers a data product that analyzes the risk of specific plaintiff attorneys and venues, machine learning-powered negotiation tools that analyze bargaining zones and walk-away values, and is developing generative AI tools that enable more effective negotiation conversations and offer package preparation.

Burge said that SigmaSight Negotiator, the company's comprehensive solution, uses hard data and machine learning models to predict damages, probabilities and more. Burge described Negotiator as a system that enables attorneys to apply negotiation best practices to their work. [CM](#)

AI's Impact on Negotiation

"There's a stark contrast between the tech and data available to help with indemnity on pre-litigated files versus what you then have on the litigation side," Burge said, adding that, really, the primary tech applied by carriers to litigated files is legal bill review. He later said that negotiating is "half art and half science. The science half is completely missing in the litigation management world."

He estimated that \$100 billion a year is spent by carriers on settlement checks to plaintiffs. That is probably the No. 1 expense for commercial carriers, he said, noting that even though maybe only 10 percent of personal lines carrier claims are litigated, a litigated claim is far more expensive than a non-litigated claim.

"And that money is being decided via negotiation that's not guided by technology and data," he explained, adding that while this may have once been the case for both the defense and plaintiffs' bars, the plaintiffs' bar has since "leapfrogged" P/C insurers.

The Greatest Risk for Insurers

Smith believes the greatest risk generative AI presents to insurance defense professionals is the way it could hurt them if they don't keep up. Most carriers and most claim executives agree that case settlement and legal defense costs are already rising.

Artificial intelligence could enable litigation financiers to shift their focus from betting on big cases to financing small cases. In other words, more litigation financing at lower levels could spell complications for insurance defense professionals.

Smith said the opportunity of this new technology is to "make the management of the indemnity piece as important as the management of the legal expense piece."

"I think it's important that every reader of your magazine [and] every C-level executive in an insurance company take every opportunity they can to learn what the plaintiff bar is doing and to ask, 'How can our industry keep up with that?'" [CM](#)