

**AI AND DAMAGES:
VIEWING THE VALUE OF YOUR CASE THROUGH MANY LENSES**

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Julie is an active member of the Houston Bar Association. She currently co-chairs the Law Library Committee for the HBA and in the past she co-chaired the Diversity, Equity and Inclusion Committee, the Professionalism Committee and the Civil Trial and Appellate Bench Bar Committee. She has twice won a president's award from the Houston Bar Association for her service. Julie received her Juris Doctorate from the University of Houston and her Bachelor of Arts from Southern Methodist University.

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Katie represents clients including private equity firms, owners and contractors, oil and gas exploration companies, commercial real estate developers and landlords, banking institutions, and high net-worth individuals in estate and trust litigation. She is recognized in commercial litigation as "One to Watch" by Best Lawyers in America and as a Texas Super Lawyer by Thomson Reuters.

Amy Farish: Amy's practice focuses on high stakes litigation with an emphasis on complex contractual disputes. Her experience includes both plaintiff and defense work, particularly in fraud and breach of fiduciary duty cases.

She received her J.D. from The University of Texas, where she graduated with honors and served as the Symposium Editor for the Texas Review of Litigation and as Staff Editor of Texas Journal of Women and the Law. After law school, Amy clerked for Justice Debra Lehrmann of the Texas Supreme Court.

Amy was honored with the 2023 Outstanding Young Litigator Award by the State Bar of Texas Litigation Section. She is recognized in Best Lawyers in America "Ones to Watch" list in Commercial Litigation. She currently serves as the chair of the Houston Young Lawyers Foundation and is a member of the University of Texas School of Law Young Alumni Committee.

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AI AND DAMAGES: VIEWING THE VALUE OF YOUR CASE THROUGH MANY LENSES

Perhaps one of the most appealing things about the legal profession is that every day looks a little different. Even if you work on the same type of matters, you will encounter different fact patterns, unique clients, new opposing counsel, and ranges of factfinders—sometimes all in the same case. Underlying the variety in your caseload is the constant evolution of the legal field itself. Some reading this article will remember a time before client emails came to a phone that fit into your pocket; others can remember practicing law before Westlaw. Now, we are the last lawyers who will tell war stories of cases worked up without Artificial Intelligence (“AI”).

Entire papers have been written on practical and ethical safeguards for the use of AI; this article will focus on how this nascent technology is being employed in ways that can affect the damages owed by or to your client. Damages are arguably one of the most important part of any case—you can win your liability case and leave court with a frustrated client if damages are not properly determined, presented, and preserved. Detailed below are ways three key sectors of the legal industry (insurance, experts, and mediators) are already using AI.

I. BE AWARE: INSURANCE COMPANIES ARE DEPLOYING AI

AI can feel intimidating or insurmountable—like suddenly we all need to know the secret language of coding. And to be sure, there is an art to identifying the best AI model for your intended use then learning how to operate that AI model, whether by refining the questions you ask or defining the data you want the model to analyze. But at a very basic level, AI is excellent at reviewing large volumes of information and synthesizing it. This core competency is understandably attractive to insurance brokers whose bread and butter is quantifying inherently individual experiences like life expectancy or injury outcomes. Understanding how insurance companies are using AI will help prepare you to work with them to achieve the best result for your client.

So how is AI being employed by insurance companies? An AI model can be provided with records from past cases—every medical record, demand, and final result, then asked to compare those cases to the case at bar. Rather than a single adjuster relying on his or her own experience or sense of the case, AI can sift through all the cases and produce a settlement range.

In the past, filing an insurance claim would trigger review by an insurance adjuster. A wrongful death or personal injury insurance claim would be evaluated against medical records, police reports, financial records, and likely actuarial tables or other statistical data maintained by the insurance company. A claim against legal insurance involved providing a representative with pleadings, communications, contracts and financial records. Review could take weeks and the process might be iterative; the insurance company would request further information or advise on settlement options. Now, initial review can be done in minutes. And a settlement range produced by AI’s analysis is viewed as more objective, sometimes limiting the ability of adjusters to go beyond that recommended settlement range. Edelsteins Faegenburg + Blyakher, *AI in Insurance Injury Claim Valuation*, (January 5, 2026) <https://edelsteinslaw.com/uncategorized/how-insurance-companies-use-ai-to-value-injury-claims-and-what-they-get-wrong/>.

Rather than being stymied by an adjuster whose hands seem tied by an AI recommendation, consider how AI can be harnessed to your client’s benefit. First, just as the insurance companies have a new tool to churn out settlement ranges, so too do you have a new way to assess the strength of your client’s position. Some lawyers have great intuition for where a case should settle; most of us use our best judgment but try to prepare our clients for the worst case. AI is getting better at forecasting potential outcomes and has advanced in its ability to consider elements like specific judges and opposing counsel. Datagrid Team, *How AI Agents Revolutionize Settlement Analysis for Litigation Attorneys*, DATAGRID (May 7, 2025), <https://datagrid.com/blog/ai-agents-automate-settlement-analysis>. Jury consultants that run full-scale jury tests are cost prohibitive for many clients; there are AI models that promise similar results for a fraction of the cost. All predictions must be taken with a grain of salt, but using AI to evaluate the damages model of a case from every angle can save both attorneys and clients much time and money.

Second, just as AI can marshal records, data, and past results to estimate a settlement range, AI can also be utilized to draft detailed demand letters that are heavily supported by records and analogous cases. Dortch Lindstrom Livingston Law Group, *How Artificial Intelligence Used in Insurance Claims Affects Your Wrongful Death Case*, (January 5, 2026), <https://www.dll-law.com/blog/ai-in-insurance-claims-and-texas-wrongful-death-cases.cfm> Rather than describing an accident at high-level and relying on the emotional impact of a catastrophic injury, references to surgical notes, future treatment plans, and past expenses can be incorporated in early communications with insurance (or opposing counsel). Once key facts are identified, AI can also help organize and present information by editing drafts or identifying any inconsistencies in positions being presented.

Finally, understanding how an insurance company might be relying on AI can inform negotiations. Claiming that you've "never heard of a case like this settling for less than x dollars" will reveal more of your experience than of reality—AI has done the job of reviewing all the cases, and finding one to rebut your claim will be easier than ever. Instead, focus on the elements AI hasn't considered that a jury might. A young woman who is injured in a car accident may be categorized as a dependent in a family unit but actually be a breadwinner or emotional caregiver within her home. A small business passed down through generations of a single family may be perceived differently by a jury than a similar business that sold to investors years before a contract dispute, even if both had the same financial records.

II. BE PREPARED: USE OF AI IN EXPERT WORK SHOULD BE EXPECTED (AND POTENTIALLY DISCLOSED)

A poll conducted at the Chartered Business Valuators Institute Conference in June 2025 revealed that 87% of valuation professionals reported using AI tools, with 79% using AI for research, 55% for report drafting, 23% for analysis, 9% for mathematical checks, and 21% for other uses. This widespread adoption necessitates immediate attention to disclosure, reliability, and professional responsibility issues.

Leading expert consulting firms have responded by developing institutional frameworks. Major firms in the damages and valuation space have invested in proprietary AI platforms to enable experts to utilize AI capabilities while maintaining data security and client confidentiality. Applications include fraud detection, expert credential verification, and document analysis, but these tools must be "led by experts" and applied appropriately.

When used responsibly, AI offers substantial efficiencies in managing the heavy burdens of expert work. Modern litigation frequently involves enormous volumes of data requiring sophisticated analysis to develop and support expert testimony. AI can assist experts and counsel by analyzing voluminous datasets and processing large-scale financial data, transaction records, or technical documentation that would be impractical to review manually. It can cross-reference calculations, verifying mathematical computations and identifying anomalies or inconsistencies in complex damages models. In sum, AI can assist experts and counsel through the entire expert lifecycle, from retention through report preparation.

Despite these benefits, recent judicial decisions illustrate the serious risks of improper AI use in the expert arena. In *Kohls v. Ellison*, a Minnesota federal court excluded expert testimony after the expert used AI to draft his declaration, which cited non-existent academic articles. No. 24-CV-3754 (LMP/DLM), 2025 WL 66514, at *4 (D. Minn. Jan. 10, 2025). The court found that citation to fabricated sources "shattered [the expert's] credibility" and warranted complete exclusion. *Id.* Ironically, the expert was testifying about the dangers of AI and misinformation. In *Matter of Weber*, a New York court found a damages expert's testimony unreliable when the expert used AI for calculations but could not explain the underlying basis or sources. *Matter of Weber as Tr. of Michael S. Weber Tr.*, 85 Misc. 3d 727, 741, 220 N.Y.S.3d 620, 633 (N.Y. Sur. 2024).

These cases raise important questions about what constitutes acceptable expert methodology in the AI era. Under Federal Rule of Evidence 702 and *Daubert*, expert testimony must be based on "sufficient facts or data" using "reliable principles and methods" that the expert has "reliably applied to the facts." Fed. R. Evid. 702; *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993) (expert testimony must be "not only relevant, but reliable"). Experts must demonstrate technical competence and take personal ownership of opinions as professional judgment rather than machine-generated conclusions.

The question of disclosure has become equally critical. Federal Rule of Civil Procedure 26(a)(2)(B) requires expert reports to include "the facts or data considered by the witness." Some current guidance suggests that substantial reliance on AI-generated results requires disclosure, which could include documenting the platform used, query prompts, dates of usage, and verification methods. Some federal courts have gone further by requiring express disclosure under their procedural obligations. While there is no uniform federal rule mandating AI disclosure – though we suspect that is coming – individual judges are requiring certifications or disclosures related to AI in filing, including expert reports.

Disclosure requirements are not limited to the courtroom. In March 2025, the Chartered Institute of Arbitrators issued Guidelines encouraging tribunals to address AI expressly in procedural orders, including by directing targeted disclosure of material AI use that affects evidence, expert reports, or submissions, and by setting verification and confidentiality expectations. These developments reinforce that parties and experts should be prepared to explain if and how AI tools affected their work product and how reliability and confidentiality were safeguarded.

And don't forget to check your local rules. Both the Eastern and Northern Districts of Texas have adopted AI-related local rules that contain disclosure and verification requirements, which could apply to expert reports. The Northern District's Local Rule appears below:

(f) LR 7.3 Disclosure of Use of Generative Artificial Intelligence.

- (1) A brief prepared using generative artificial intelligence must disclose this fact on the first page under the heading “Use of Generative Artificial Intelligence.” If the presiding judge so directs, the party filing the brief must disclose the specific parts prepared using generative artificial intelligence.
- (2) “Generative Artificial Intelligence” means a computer tool (whether referred to as “Generative Artificial Intelligence” or by another name) that is capable of generating new content (such as images and text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.
- (3) A party who files a brief that does not contain the disclosure required by subsection (f)(1) of this rule certifies that no part of the brief was prepared using generative artificial intelligence.

These developing standards create specific obligations for attorneys working with expert witnesses. Attorneys should include contractual provisions requiring disclosure of AI usage in expert engagement agreements. Professional ethics commentators have emphasized that lawyers must “make reasonable efforts to ensure that the [employed nonlawyer’s] conduct is compatible with the professional obligations of the lawyer,” which includes managing expert AI use. American Bar Association, Model Rule 5.3 Responsibilities Regarding Nonlawyer Assistance. Counsel should directly inquire whether experts employed AI tools and demand articulation of verification protocols. Attorneys must ensure experts understand that AI can assist with data processing and analysis but cannot replace expert judgment. Counsel should work with experts to evaluate strategic disclosure decisions and consider deposing opposing experts regarding AI usage for credibility assessment.

Additionally, counsel should address confidentiality concerns. Commercial AI platforms may expose confidential client information to technology providers, and some platforms use inputs for training. Professional obligations to safeguard confidential information continue to apply regardless of AI use.

While AI offers significant analytical capabilities for managing voluminous data and complex calculations, expert witnesses bear personal responsibility for accuracy and reliability. Experts must employ AI as a tool while retaining complete ownership of professional opinions and maintaining methodological transparency. For litigators, the imperative is to ensure retained experts understand evolving standards and are prepared to challenge opposing experts whose AI practices fall short. “The AI did it” is not a viable defense to unreliable expert opinions.

III. BE MINDFUL: AI AFFECTS ALTERNATIVE DISPUTE RESOLUTION

In a recent article published by the International Academy of Mediators entitled “**Artificial Intelligence in Mediation**,” Professor Sarah Rudolph Cole, IAM Scholar-in-Residence, looked at how mediators are using AI to help prepare and engage more effectively. Sarah Rudolph Cole, *Artificial Intelligence in Mediation* INTERNATIONAL ACADEMY OF MEDIATORS (Aug 24, 2025) <https://iamed.org/artificial-intelligence-in-mediation>. For example, legal-specific AI platforms such as Lexis+ AI and Thomson Reuters CoCounsel can aid the mediator in rapidly conducting legal research and summarizing cases, statutes, and secondary authorities. These tools are also capable of offering structured analysis of legal merits, which can be helpful when mediators need to understand the legal contours of a dispute. And most interestingly, AI can be used to apply data analytics and predict how a particular judge might rule based on their past decisions.

These functions can dramatically increase the efficiency of mediation preparation, particularly in complex disputes. However, these tools must be used thoughtfully and ethically. Issues of confidentiality are of utmost concern for mediators. Mediators should routinely assess whether their use of AI tools risks violating confidentiality principles or influences their ability to remain neutral when in the mediation room.

Mediators must also be aware that AI tools may “hallucinate” (i.e., generate false or misleading information), misrepresent case law, or introduce bias based on flawed training data. AI systems are not yet able to replicate the relational judgment, or improvisation that human mediators bring to the mediation rooms. In short, mediators should view AI not as a replacement for human discernment, but rather as a supplemental tool that must be used conscientiously.

One especially promising application of AI in mediation, according to Professor Cole, lies in predictive analytics. Using trained AI models to forecast the likely trajectory of a case could serve multiple purposes such as helping parties realistically evaluate litigation risks, helping mediators identify potential impasses and breakthrough moments, and allowing mediators to suggest settlement ranges grounded in precedent and pattern-based analysis.

Again though, these predictive tools must be handled carefully. Too much reliance on AI-generated outcomes could undermine party self-determination or create pressure toward resolution that feels externally driven. For this reason, Professor Cole urges that AI’s role should “remain advisory, not determinative.”

Ultimately, AI must be used ethically and transparently in mediation. While AI tools grow more capable, attorneys and mediators must remain attuned to any possible confidentiality issues and protect the parties data and sensitive information.

Mediators must also guard against bias that may arise through selective use of AI-generated insights. For example, AI models predicting settlement ranges might systematically undervalue claims from certain demographic groups because historical data shows they settled for less—not because their claims had less merit, but because they faced structural disadvantages.

Predictive models typically cannot account for case-specific nuances that experienced attorneys and parties understand intimately. This runs the risk of mediators and attorneys pushing parties toward a “statistically likely” outcome that does not fit the actual case. A model might predict settlement value based on injury severity and lost wages but miss that this particular plaintiff is a concert pianist whose hand injury has unique career implications. And likewise, AI predictions can make biased or strategic positions appear neutral and data-driven, potentially compromising the mediator's role as an impartial facilitator of party self-determination.

That said, when parties are deadlocked, objective data can provide face-saving reasons to move. Rather than one side “giving in,” both parties can frame concessions as responding to market realities or statistical probabilities. In that situation, the AI becomes a neutral third reference point.

The key is using predictions as one input among many—valuable for framing discussions and testing assumptions but not replacing the nuanced judgment that considers each case's unique circumstances and the parties' actual interests beyond mere monetary outcomes.

IV. BE SMART: KNOW THE REGULATIONS AND GUIDELINES THAT INFORM AI USE

The AI Overview of google search results will respond to the query of “what percentage of Texas attorneys use AI with the following statistics: “Roughly 30-40% of individual legal professionals use generative AI, with adoption higher in large firms (around 39%) than small ones.” This statistic is buttressed by non-AI sources, including widescale surveys and State Bar of Texas Taskforce reports, with some lowering the range from 20-30%. *See* John G. Browning and Christene Krupa Downs, *The Future is Now: The Rise of Artificial Intelligence in the Legal Profession*, State Bar of Texas; Taskforce for Responsible AI in the Law, 2023-24 Year-End Report, State Bar of Texas.

Without a doubt, the percentage of lawyers using AI in all parts of the legal practice is growing, and guidance is growing along with it. Regulations outside the legal profession can apply, like the Federal Trade Commission’s admonishment that companies should be “transparent with consumers,” “explain how algorithms make decisions,” “ensure that decisions are fair, robust, and empirically sound,” and “Hold themselves accountable for compliance, ethics, fairness and nondiscrimination.” FTC, *Using Artificial Intelligence and Algorithms* (April 8, 2020), <https://www.ftc.gov/businessguidance/blog/2020/04/using-artificial-intelligence-algorithms>; FTC, *Aiming for truth, fairness, and equity in your company’s use of AI* (April 19, 2021), <https://www.ftc.gov/businessguidance/blog/2021/04/aimingtruth-fairness-equity-your-companys-use-ai>.

As you begin to explore the ways AI can expand your practice, keep in mind the guidelines below:

First, as Texas lawyers, we must always consider the Texas Rules of Ethics:

Tex. Comm. On Professional Ethics, Op. 705 (2025)

Before any lawyer uses a generative AI product for client work, the lawyer must understand to a reasonable degree how the technology works and must take reasonable precautions to ensure that any client confidential information is protected.

If a lawyer intends to use confidential information in conjunction with generative AI tools, the lawyer should consider informing clients about the associated risks and may need to secure client consent.

A lawyer’s failure to verify generative AI outputs can implicate a host of Rules, including Rule 1.01 (Competent and Diligent Representation), Rule 3.01 (Meritorious Claims and Contentions), Rule 3.03 (Candor Toward the Tribunal), and Rule 3.04 (Fairness in Adjudicatory Proceedings), among others. The best practice here, as with many other efficiency-enhancing tools in the law: AI-generated outputs can be used as a starting point for a lawyer’s work, but must always be carefully analyzed for accuracy and quality. That said, a lawyer’s duties require more than merely detecting and eliminating false AI-generated results—the lawyer is ultimately responsible for ensuring that the content is accurate and supports the client’s interests.

The American Bar Association has also issued formal guidance:

AMERICAN BAR ASSOCIATION ADOPTED BY THE HOUSE OF DELEGATES FEBRUARY 6, 2023**Resolution 604**

RESOLVED, That the American Bar Association urges organizations that design, develop, deploy, and use artificial intelligence (“AI”) systems and capabilities to follow these guidelines: 1) Developers, integrators, suppliers, and operators (“Developers”) of AI systems and capabilities should ensure that their products, services, systems, and capabilities are subject to human authority, oversight, and control; 2) Responsible individuals and organizations should be accountable for the consequences caused by their use of AI products, services, systems, and capabilities, including any legally cognizable injury or harm caused by their actions or use of AI systems or capabilities, unless they have taken reasonable measures to mitigate against that harm or injury; and 3) Developers should ensure the transparency and traceability of their AI products, services, systems, and capabilities, while protecting associated intellectual property, by documenting key decisions made with regard to the design and risk of the data sets, procedures, and outcomes underlying their AI products, services, systems and capabilities. FURTHER RESOLVED, That the American Bar Association urges Congress, federal executive agencies, and State legislatures and regulators, to follow these guidelines in legislation and standards pertaining to AI.