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## **Target Claims Litigation Challenges with Artificial Intelligence**

### **I. Avoid the AI hype**

#### **Getting Work Done**

Artificial intelligence has been around for decades now, but it is only in the last decade or so that business applications for the technology has been growing. And it will not be slowing down.

“Spending on AI software will top \$125B by 2025 as organizations weave AI and Machine Learning tools into their business processes. In parallel, investors have poured more than \$5 Billion into over 1,400 AI fueled sales and technology companies to meet this demand.” (Diorio, S. “Realizing the Growth Potential of AI.” (2020, May 8), *Forbes*, <https://tinyurl.com/y5rorqf8>).

What remains to be seen is how much of the money that is spent on procuring or developing AI solutions yields a return on an organization’s investment. Over the years, many applications on the leading/bleeding edge have died on the vine after implementation for a multitude of factors – poor user adoption, overly complicated tech/processes, lack of executive support, and not fit for purpose.

#### **“Boring” Technology Is the Workhorse**

AI is like any other technology – it should be pursued to tackle business problems, enhance the ability of users to do their work, and provide valuable insights that can change process, save money, or drive towards tangible business goals. It is often the “boring” use of technology that makes the real impact, and AI is no different.

“...unlike the way that science fiction movies and books would like to portray AI, most of the AI implementation today is mundane or “boring” in nature. Rather than seeing lots of autonomous machines roaming the planet, the most successful AI implementations are more snoozy affairs such as document classification or advanced predictive analytics solutions, but they are providing real value to those using it.” (Walch, K. “Is AI Overhyped?” (2020, June 4) *Forbes*, <https://tinyurl.com/yxro4ebk>)

Tackling real business problems – ones that have been plaguing carriers for years – is the “boring” we are discussing in this session about the management of litigated claims. There are several exciting technologies that tackle everyday problems – challenges involved with billing guideline enforcement, firm management and evaluation, case assignment and outcome prediction. But make no mistake, solving these problems create rocks stars out of the smart folks that set out to tackle them.

## II. Powering AI

### Data and Analytics

Over the past couple of years, the amount of data being collected by businesses of all types and sizes has grown exponentially. According to IDC, the Global Datasphere will grow to 175 zettabytes by 2025 (Reinsel, D., Gantz J., and Rydning, J. *The Digitization of the World from Edge to Core*, (2018 Nov.), IDC and Seagate).

P&C insurers are no different and those that view analytics as a vital component of their business – from marketing to underwriting to claims resolution – will continue to have a powerful tool in a highly competitive market.

“At a time when companies in many industries offer similar products and use comparable technology, high-performance business processes are among the last remaining points of differentiation. [ . . . ] What is left as a basis for competition is to execute your business with maximum efficiency and effectiveness, and to make the smartest business decisions possible. And analytical competitors wring every drop of value from business processes and key decisions.” (Davenport, T.H., Harris, G., *Competing on Analytics: The New Science of Winning*, (2007), Harvard Business Press).

### Operationalize Your Data

“...insurers are sitting on a treasure-trove of big data; the main ingredient AI requires to be successful. The abundance unstructured data can be leveraged through AI to increase customer engagement, create more personalized service and more meaningful marketing messages, sell the right product to customers and target the right customer.” (*Artificial Intelligence*, (2020), The Center for Insurance Policy and Research, <https://tinyurl.com/y3uzo74e>).

Data is the gas that drives the AI engine and insurance carriers do not want for data. They often too much of it, sometimes hard to parse or meaningfully use due to several issues – data cleanliness, privacy concerns, or analysis capabilities.

Although claims departments are collecting an enormous amount of data, much of it is raw information that by itself is not very useful because it is not operationalized. It does not provide users with the actionable insights they need when they need them. Nor does it provide them with information that can help them predict how long a litigated claim might take to complete, how much budget to allocate to the matter, or which law firm partner will be the right fit. It is up to claims managers to make their own judgements on these issues. That can be time-

consuming, headache-inducing, and—often—inaccurate, costing organizations money, and reducing efficiency, and adding time to the resolution process, which can impact customer satisfaction. Predictive analytics offers a better way to look at data, to think about it, and to use it to better manage claims litigation.

### **III. AI as Enabler Versus Replacer**

#### **Providing Parsed and Analyzed Data**

Technology should empower the people who use it, and AI is no different. Making better, more confident decisions or streamlining processes can help claims adjusters better help their policyholders while conducting sound business.

One of the narratives around AI is that it will replace humans. It is a common trope in science fiction, but AI augments our human abilities by doing work we simply cannot do. Parsing terabytes of data to extract meaning, spot trends, or make decisions is not something our brains can do, and that is fine. Who wants to be parsing data when you can be analyzing its output?

“In fact, the signals are all around us that the very same companies that are investing heavily in AI and robotics (and automation using these) are also finding that the best, most efficient, cost-effective solutions include humans and machines working together.” (Lokitz, J. *The Future of Work: How Humans and Machines Are Evolving to Work Together*, Business Models, Inc. <https://tinyurl.com/yycsoaru>)

#### **Will AI Replace You? Or Empower You?**

The current state of AI is a net positive for litigation groups and attorneys. AI will not replace humans doing highly specialized work, but it will take over rote tasks that take time away from more valuable work.

AI has largely been used to empower claims professionals and attorneys by removing rote tasks and non-value add work from workstreams, allowing them to focus on the managing claims or practice of law and spend less time doing administrative work. AI is also providing information to attorneys and claims professionals that would take extraordinary amounts of human hours to complete.

JP Morgan released COIN (Contract Intelligence), which was able to extract 150 attributes from 12,000 contracts and credit agreements in seconds, a feat that would have taken 360,000 hours of legal work (Son, H. *JPMorgan Software Does in Seconds What Took Lawyers 360,000 Hours*. (2017, 27 Feb.), Bloomberg. <https://tinyurl.com/jc3lppe>).

#### **IV. Key Areas of AI in Claims Litigation**

So how do we apply AI in claims litigation and what outcomes do we expect from the use of the technology. As we have already stated, insurance carriers have massive amounts of historical data, and that data can be used as a benchmark.

##### **Bill review & billing guideline compliance**

Controlling costs is never not going to be a priority for claims organizations. AI is very good at finding areas of cost-control opportunity and spend leaks and absolutely should be considered a key piece of technology that can touch bill review, case/budget assessment, and settlement expectations.

Specifically addressing a legal invoice, there are several opportunities for AI to make an impact on legal spend. Carriers can receive millions of line-item charges and expenses over a calendar year and there are nuggets of data lessons to be learned. The legal invoice is complicated and often contains non-compliant billing.

Bill review units within carriers are that extra set of eyes to ensure invoices are not only correct but compliant. 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 will not 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 decides 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.

Of particular interest to carriers is spotting and correcting non-compliant items. Billing guidelines can be complex and incorrectly applied or not applied at all, and one of the best ways to control costs is simply by enforcing the guidelines put in place by the claim's organization. But applying a layer of "rules" on top of billing leads to mistakes. Finding and correcting those mistakes takes time and can be a frustrating exercise, especially when receiving pushback from firms. Remember, the guidelines are part of a business arrangement put in place to set the parameters of the engagement and can be confusing for both the carrier and firms to apply.

## Case Assignment

Case assignment is a key area of the litigation process where claims professionals can benefit from a bevy of data analysis and AI. For many practice areas, the urge may simply be to “go with who you know,” which greatly leans on the learned experience of your claims professionals and the relationships they have built with their go-to firms, but there is a great opportunity here to leverage a myriad of data points and apply AI to the case assignment process.

AI providing predictive analytics at critical decision points can uncover better choices for each case depending on its parameters. AI can analyze practice area, complexity, jurisdiction, and other variables and make recommendations based on past experiences.

## Predicting Budgets

“[L]itigation budgets drafted by a litigator without significant involvement of corporate counsel or the client are not particularly valuable as a tool to control litigation costs. There should be a direct correlation between a client's litigation goals and the planning and projected cost of litigation.” (“The Litigation Plan: An Alternative to Traditional Litigation Budgets”, Charlotte E. Thomas, *Corporate Counsel Business Journal*).

Carriers can use predictive analytics to look at how a firm would budget a particular matter and compare firms by overall budget and budget breakdowns into UTBMS matter phases. Where artificial intelligence makes its biggest impact on predictive analysis is finding the details that would regularly be missed or not considered when only looking at historical results. For instance, AI technology can not only look at the case type and its dimensions and specifics, but it can also detect anomalies or outliers that might affect a case due to geography, complexity, risk, performance traits of involved parties (e.g., a defense attorney taking longer with e-discovery than their peers).

These different factors can affect case costs and length; understanding from the beginning how a firm or attorney may budget a case can help not only in counsel selection but setting up a clear set of expectations and a line of communication around those expectations. Adjustors can avoid decisions that will cost money down the line or affect settlement timing, indemnity costs, and total case costs.

## Predicting Case Cycle Time & Early Case Resolution

Predicting budgets by firm is just one side of the analytics coin; one of the harder metrics to quantify is cycle time. But aside from case cost, it is the one metric that often affects the policyholder the most. Waiting for resolution can affect customer satisfaction, and for the carrier, cases that take more time tend to cost more. Understanding the timing of a case helps the carrier and counsel better understand when it is time to turn towards settlement/resolution.

Cycle time predictions help with the management of cases in general; if a case is nearing the upper end of its predicted cycle time and there has not been discussion or offer of a settlement yet, then this is a red flag to the adjuster that something is holding up the usual process and expectations either need to be adjusted (as do budgets, most likely) or a communication with outside counsel needs to occur to realign activities.

For organizations that value early case resolution, cycle time predictions can help them better see if their resolution strategies are working and which firms are providing value and alignment with early resolution goals. Viewing predicted cycle times by firm for quick comparison allows adjusters and litigation managers to understand which firms are performing to expectation and which firms may need further instruction.

### **Outcome Assessment**

The “holy grail” of insurance claims litigation metrics is understanding total case cost – legal expenses plus whatever settlement/judgement amounts comprise a case’s outcome. Better controlling either of these factors can greatly impact the bottom line for a carrier. There are a lot of moving pieces that make controlling outcomes equally an art and a science. The people involved in a claim – the adjusters, the attorneys, the experts – all leverage their years of experience and expertise to provide the work simple data or technology alone cannot replicate or replace.

A high percentage of cases settle, anywhere from 90-97% depending on which statistics you follow. Deciding when to settle and for how much is therefore critical to the success of a claim’s litigation program, especially those seeking early case resolution.

When using past case data to draw assumptions about new cases, using that data as a historical reference to understand how to best proceed is a powerful tool when determining the timing and cost of a settlement. For example, a claims adjuster may look at a case and see historically where it tends to fall in settlement, if the amount of settlement is less than what they are projected to spend in trying to drive the settlement down, and then decide to settle early.

For the carrier, the factors of cost of legal expenses are weighted against the cost of settlement and knowing the range those metrics by pulling a historical perspective in greatly improves the adjuster’s ability to hit the right spot of when to settle and for how much. For the policyholder, the litigation is resolved sooner. For many carriers, getting an idea about settlement timing and approximate cost expectations can help them understand where the “sweet spot” is for a case, so they are resolving the claim at a cost and time frame that fits resolution goals and policyholder satisfaction.

## **V. AI Challenges**

### **AI Is Only as Good as The Data**

Carriers have a great deal of data, but data discipline must be at the center of any good analytics program. Data – good, clean data – drives AI algorithms that can help solve specific business challenges. The better the data, the better, more accurate the AI analysis can get, providing actionable insights at key decision points in the litigation process.

Not having clean, good data, or having an environment that does not value data, has its consequences.

“The absence of a data-driven culture affects AI as much as any technology. It means that the company and its leaders are unlikely to be motivated or knowledgeable about AI, and hence unlikely to build the necessary AI capabilities to succeed.” (Davenport, T. “Return on Artificial Intelligence: The Challenge and The Opportunity.” (2020, March 27), *Forbes*, <https://tinyurl.com/yxgysd37>).

Good AI starts with a solid data foundation. Data structures must be well-planned and data itself should be treated as a key business asset. Data that is poorly structured or riddled with errors (formatting, spelling, incorrect, missing) is often difficult and time-consuming to extract true value from. Making data cleanliness a priority is an absolute must. It drives reporting, analysis and algorithms that drive AI. AI learns from the data. The better the data, the better the learning, and the better the outcomes achieved.

### **AI Needs A Human Touch**

AI is a great set of technology to help cut down on the time and effort it takes to glean insights from large, complex sets of data, but it will always need a human touch. There are limitations to what AI can know and produce, nuances that we have humans take for granted. For instance, a predictive algorithm may produce a list of firms seem best suited to a specific case, but exceptions are always going to exist.

There is no replacement for human skill and judgment, especially when dealing with legal matters and balancing the relationship between carrier, firm, and policyholder. Ultimately, AI has its limitations – it can only read data or invoices so well, operating within its parameters. It is a machine, not a human being, and can be circumvented.

For example, law firms look for ways to make sure they are properly billing for their work so they can get paid, and sometimes those methods of billing will circumvent the AI’s ability to catch errors, non-compliance, or anomalies. The firms are not acting in bad faith, they are trying to bill properly for the work that has been done and doing their best to get paid. Humans understand exceptions and workarounds in ways that machines simply do not.