

Insurance Insights

May 2026



A Note from the Insurance Team

All About AI

AI is everywhere—impacting business functions, litigation, and even court chambers. In this edition, we unpack what regulators signaled about AI at the NAIC Spring National Meeting, navigate privilege and ethical issues when AI enters the litigation arena, and report on AI trends in the insurance industry. We also highlight key coverage and class action rulings from the past quarter. Finally, we spotlight patent opportunities in insurance technology.

- Alston & Bird Insurance Team

Key AI Takeaways from the NAIC 2026 Spring National Meeting

Did you miss the National Association of Insurance Commissioners' Spring National Meeting March 22–25 in San Diego? Our team noted several takeaways from the Innovation, Cybersecurity, and Technology Committee and its working groups' discussion on AI use:

- **Increased Focus on Third-Party AI and Data Oversight.** The NAIC is advancing a proposal to create a registry for vendors that provide AI models and datasets to insurers. The registry is intended to give regulators greater visibility into the third-party models and datasets used by insurers and to promote appropriate vendor governance practices. The registry reflects heightened regulatory focus on third-party AI governance.
- **AI Evaluation Pilot Programs Underway.** Several states have launched, or are expected to launch, pilot programs using an NAIC-developed tool to assess insurers' use of AI. The tool focuses on high-risk use cases and evaluates governance practices. Participating insurers have been selected based on factors such as market share, lines of business, and anticipated AI reliance, with most pilots to date involving property and casualty and life insurers. The NAIC plans to refine the tool based on pilot results and consider formal adoption at the Fall National Meeting.

- **Operationalizing the NAIC AI Model Bulletin.** A presentation by the NAIC's senior behavioral data scientist and actuary addressed operationalizing the NAIC AI Model Bulletin. The discussion highlighted governance best practices, including cross-functional AI governance committees, enterprise AI inventories, third-party risk management, and pilot testing before scaling AI systems.
- **Agentic AI in Insurance.** A presentation on insurers' use of agentic AI highlighted wide variation in AI maturity across the industry and elevated risks associated with agentic systems. Key challenges included accountability gaps, cascading errors across agents, and data and technology limitations. The panel discussed mitigation strategies such as enhanced monitoring, clearer accountability frameworks, updated governance structures, and human-in-the-loop escalation for high-risk use cases.

A further report on the Spring National Meeting is available at [Alstonprivacy.com](https://www.alstonprivacy.com). ■

Is Your Secret Safe with AI?

United States v. Heppner, No. 1:25-cr-00503 (S.D.N.Y. Feb. 17, 2026).

Warner v. Gilbarco Inc., No. 2:24-cv-12333 (E.D. Mich. Feb. 10, 2026).

Two federal courts reached different conclusions on "a question of first impression nationwide": whether AI-generated materials retain privilege protections.

In *Heppner*, a criminal defendant anticipating indictment on securities fraud charges used generative AI to organize facts and generate reports outlining legal strategy, which he then shared with counsel to inform his defense. Judge Rakoff of the Southern District of New York held that the attorney-client communication privilege was waived because the public AI tool was effectively a third party that by its privacy policy carried no reasonable expectation of confidentiality. The chats also failed to meet the standard for attorney work product because they weren't created at counsel's direction.

In *Warner*, a pro se civil litigant used a public AI tool to prepare litigation materials. Judge Patti of the Eastern District of Michigan reasoned that generative AI programs "are tools, not persons." The materials were protected work product because they were prepared in anticipation of litigation. That status was not waived by disclosure to the AI program because waiver would require disclosure "to an adversary or in a way likely to get in an adversary's hand."

Despite disagreement about whether AI is like a person, the two holdings are reconcilable. The pro se plaintiff's materials met the test for work product, and disclosure to a public AI tool did not rise to the more rigid waiver standard for work product. It is unclear whether the judges would agree on whether disclosure to public AI tools can waive the attorney-client communication privilege. ■

Up to Date on Your AI Ethics?

You've heard the cautionary tales of attorneys sanctioned for submitting briefs riddled with AI-hallucinated case citations. And AI-related questions have quickly become routine in litigation, from determining whether to tell opposing counsel about AI use in discovery to assessing challenges to an opposing party's expert reports or evidence that relied on AI.

But did you know that the American Bar Association (ABA) issued formal [guidance](#) on lawyers' ethical obligations when using generative AI, and several states' ethics committees have followed suit? Beyond the familiar warnings to check citations and exercise care with confidential information, the guidance is not always uniform:



Mona Bhalla
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Attorney Spotlight

When she joined Alston & Bird in 2024, after serving as an influential regulator of the New York financial services and insurance sectors for four years, Mona Bhalla brought with her more than 30 years of combined government and private sector experience. Two years later, Mona begins an exciting new chapter in private practice free of restrictions as a former insurance regulator.

She now has latitude to bring a broad and multidisciplinary perspective to clients navigating complex New York regulatory, litigation, transactional, securities, and governance matters. Her extensive experience and insights continue to inform her advice to a range of organizations, including global, national, and regional re/insurance companies.

While at the New York State Department of Financial Services (NYDFS), Mona served as deputy superintendent for the Life Bureau, overseeing 650 regulated entities and managing 130 professionals who regulate the New York life insurance industry. Mona established standards for financial solvency, market conduct, and corporate oversight, as well as ensured compliance through regulations and monitoring.

Now she's ready to put her extensive experience to work for you. ■

"This is an important and dynamic time to serve as a strategic adviser, regulatory advocate, and thought leader to sophisticated re/insurance companies, trade associations, private investment firms, and other key players in the market."

- Mona

All About AI

- **Client Communication.** The ABA and certain states treat communicating AI use to a client as circumstance-dependent, only required when inputting confidential information or influencing a significant decision. [Kentucky](#) and [North Carolina](#) specify that routine AI use, such as for research, need not be communicated. [Illinois](#) and [Pennsylvania](#), however, advise disclosure of any AI use.
- **Fees.** The ABA and nearly all states weighing in agree that lawyers may not charge hourly fees for time saved by AI. But certain states like [Maryland](#) provide more flexible guidance, stating that if AI substantially reduces the time to perform a task, that *may* trigger a reconsideration of the amount to charge for those legal services.
- **Competence.** There is a consensus that attorneys must understand the risks and benefits of the AI tools they use. But the ABA and certain states go further, suggesting that competence may require becoming familiar with AI tools. The [ABA Opinion](#) notes that “it is conceivable that lawyers will eventually have to use [AI] to competently complete certain tasks for clients,” much like email or word processing.

These interpretations highlight the importance of clear communication and agreements between in-house and outside counsel on expectations for AI use. ■

Et Tu, Judge?

“There are several federal judges who are beta testing Generative AI.”

– survey respondent

A recent [article](#) in the *Sedona Conference Journal* reports findings from a randomized survey of federal judges on AI use, conducted by the New York City Bar Association Presidential Task Force and Northwestern University. As of December 2025, over 60% of judges reported using at least one AI tool in their judicial work; 22.4% used AI daily or weekly; and one-third permitted or encouraged AI use in their chambers. Judges primarily employed AI for legal research and document review.

Judicial adoption may accelerate, partly motivated by a surge in filings from litigants using generative AI. In February, Los Angeles County launched a pilot program providing six judges with access to Learned Hand, a judicial-focused AI software designed to distill voluminous filings, assist with judicial reasoning, and draft preliminary orders. The Michigan Supreme Court has used the software since 2025 to help review applications for leave to appeal, and eight other court systems have reportedly contracted with the platform. ■

“A Modest Proposal” for AI in Contract Interpretation

Snell v. United Specialty Insurance Company, No. 22-12581 (11th Cir. May 28, 2024).

“My only proposal—and, again, I think it’s a pretty modest one—is that we consider whether LLMs might provide additional datapoints to be used alongside dictionaries, canons, and syntactical context in the assessment of terms’ ordinary meaning.”

— Hon. Kevin C. Newsom, concurring

Of course, some judges will be faster to adopt AI than others. It’s worth mentioning—and reading—a concurring opinion written two years ago by Judge Newsom of the Eleventh Circuit. The coverage dispute involved a question about whether “landscaping” included installing an in-ground trampoline. After “languishing in definitional purgatory,” Judge Newsom explored how AI large language models (LLMs) could have some advantages over traditional dictionaries: the broad range of everyday language usage they are trained on, the ability to set words in context, and a process that is sometimes more accessible, democratic, and transparent than the human judgment involved in assembling and selecting a dictionary definition. In short, they predict “how ordinary people use words and phrases in context,” which in some circumstances could be a helpful interpretation tool.

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Five Things to Know About AI

- 1. AI in the Product Life Cycle.** The use of AI is not limited to insurance underwriting or claims decisions—it is also used in development and design, marketing, utilization management, pricing, customer service functions, and fraud detection.
- 2. Errors Scale Quickly.** For example, straightforward claims decisions can be made in minutes as opposed to days. With this increased speed and cost-saving, though, risk can be magnified because errors scale just as quickly.
- 3. Regulation of AI in the Insurance Context Is Fragmented and State-Driven.** Some states with formal laws regulating AI often require (1) that utilization review emphasize initialized decisions, focusing, for example, on specific clinical data from a policyholder’s medical history rather than generalized data; (2) insurers to disclose how AI tools are being used; and (3) that AI systems are applied fairly and without discrimination. Other states, like Texas, focus on preventing intentional discrimination only.
- 4. Litigation Trends**
 - **Proxy discrimination** – Several property insurance cases have been filed alleging algorithmic bias in AI claims handling tools. The legal theory is that although the algorithms don’t use explicit inputs

like race or disability status, they use proxy variables (like voices, names, or credit scores) that overlap with protected classes, resulting in delayed payments, heightened scrutiny, and disparate treatment of elderly, disabled, or Black policyholders.

- **Lack of meaningful human oversight** – Courts have allowed breach of fiduciary duty and unfair competition law claims to proceed on allegations that an insurer delegated health insurance claims handling to an algorithm to determine whether care was a medical necessity, subverting required review by medical professionals. The cases implicate the opacity of AI algorithms, which can make it hard to know why a particular determination was made and in turn to challenge the determination.
 - **No actuarial justification** – Other cases allege that the use of nontraditional data sources (including consumer data) was not actuarially justified or created unfair discrimination.
- 5. NAIC at Odds with the White House.** The NAIC stated concerns about the sweeping Executive Order directing a national policy framework for AI regulation, asking that the administration instead affirm state regulation of AI in the business of insurance. From the NAIC’s perspective, the Executive Order could be read to potentially prevent regulators from addressing risks in ratemaking setting, underwriting, and claims handling. ■

Drawing a Line on Title Insurers' Duty to Defend

Michel L. Schlup Revocable Trust v. Attorneys Title Guaranty Fund Inc., No. 2023CA1886 (Co. Ct. App. Mar. 19, 2026).

Addressing what it noted was a matter of first impression, the Colorado Court of Appeals held that the “complete defense rule,” which requires an insurer to provide a defense of all claims if any claim is arguably covered by the policy, does not apply to title insurance. Claims covered by a title insurance policy can be more readily bifurcated than other types of claims. And by the policy’s clear language, stating that the insurer is not liable for expenses in the defense of actions that allege matters not insured against the policy, “the parties bargained for an unambiguous and limited range of liability.” Therefore the title insurer owed no defense of claims for trespassing and unjust enrichment that arose out of the paving of an easement. ■

Nevada Supreme Court Affirms Excess Insurer’s Right to Equitable Subrogation

North River Insurance Co. v. James River Insurance Co., No. 89228 (Nev. Jan. 29, 2026).

The Nevada Supreme Court answered “yes” to this certified question from the Ninth Circuit: Under Nevada law, can an excess insurer state a claim for equitable subrogation against a primary insurer if the underlying lawsuit settled within the combined policy limits of the insurers?

The case arose when a primary insurer refused multiple offers to settle an underlying action within its policy limits, before eventually settling for an amount that exceeded its policy limit and caused an excess insurer to contribute to the settlement. Equitable subrogation allows an insurer to stand in the shoes of the insured to pursue a claim the insured could have asserted—including when harm results from a failure to accept a reasonable settlement offer within policy limits. Although the insured’s full settlement was ultimately covered by the combined policy limits, the court reasoned that if the excess insurer had *not* contributed toward the settlement, the insured could have sued the primary insurer for amounts exceeding the primary policy. It was immaterial to the court that the insured suffered no actual damages.

The court also found that public policy considerations bolstered this application of the equitable doctrine of subrogation. A primary insurer should be on the hook for any excess settlement amount resulting from its bad faith, and that result prompts fair and prompt settlements. ■

Be Careful About Counting CAFA Damages Before They Hatch

Brown v. Allstate Corp., No. 1:22-cv-05096 (E.D.N.Y. Feb. 26, 2026).

In this putative class action alleging underpayment or denial of benefits under auto insurance policies, the plaintiff alleged that the matter in controversy exceeds \$5 million. That was sufficient to create a rebuttable presumption at the pleading stage that the plaintiff had met the amount in controversy requirement for the court to exercise federal jurisdiction under the Class Action Fairness Act (CAFA).

However, at the class certification stage, the plaintiff submitted an expert report estimating total class damages at approximately \$3.3 million. The court then calculated that the amount in controversy was with a “legal certainty” less than \$5 million as of the time the plaintiff filed the complaint. The court granted the defendant insurers’ motion to dismiss for lack of subject-matter jurisdiction, because whether federal subject-matter jurisdiction under CAFA existed as of the date of filing may be tested by post-filing evidence. ■

50 Shades of State Law

Boaden v. Continental Casualty Co., No. 1:18-cv-03314 (N.D. Ill. Feb. 6, 2026).

The plaintiffs challenged state-by-state rate raises on long-term care insurance, alleging that the state-by-state approach breached a promise to only raise rates uniformly for the entire “premium class,” which the plaintiffs contended meant all nationwide policyholders. The court found that the question of how to interpret the phrase “premium class” raised “the problematic specter of the Court applying dozens of different state laws to interpret the term.”

It rejected the plaintiffs’ proposed solution of a 50-state survey to group states into six categories for how they interpret contracts (e.g., whether and when they consider extrinsic evidence to inform the language’s meaning) for three reasons. First, to the extent extrinsic evidence could be considered, it would differ for different putative class members and within different states’ laws, impeding common answers to the contract interpretation question. Second, the grouping assumed a two-stage plan (determining whether an ambiguity exists and then resolving any ambiguity), but contract interpretation does not organize neatly into those two stages across all jurisdictions. Third, there were misclassifications and inaccuracies in the plaintiffs’ 50-state survey. In the end, the court denied class certification, finding a lack of commonality. ■

Spotlight on Patents

The New Frontier: Patent Opportunities in Insurance Technology

Patents are powerful tools that can lock competitors out of the market for new inventions and cement competitive advantages for patent owners. Over the last two decades, the insurance industry has faced an ever-shifting legal landscape that affects its ability to use patents to protect key innovations.

In the late 2000s and early 2010s, the insurance industry filed patent applications on a wide range of business processes, including methods for selling, pricing, and optimizing insurance offerings and profitability. The Supreme Court's 2014 decision in *Alice v. CLS Bank* undercut many of these filings by limiting patents on abstract business and insurance concepts, leaving the industry with little clarity on how to protect different types of innovation.

For more than a decade, many insurance-related service innovations were dismissed as mere "business methods" and deemed ineligible for patent protection. That characterization overlooks the reality that most insurance-related innovations are deployed at scale and maintained using a complex array of systems and technologies.



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Unfortunately, successful outcomes at the U.S. Patent and Trademark Office (USPTO) are not guaranteed. The USPTO has structural and procedural headwinds that can become barriers for unwary applicants. Examination is fragmented across art units: some boast high allowance rates, while others appear committed to preserving near-zero allowance rates. Guidance and examiner training can be uneven, and the application of eligibility "tests" can vary. Applicants also contend with frequent—and sometimes unannounced—shifts in examination standards that change how similar claim language is treated from one moment to the next.

A more consistent path to strong outcomes is to emphasize the technological context of an insurance-related innovation in the patent application, rather than dismissing or ignoring it. Identify the technical point of novelty, articulate the technological problem it solves, and build a record (specification, claims, and prosecution history) that reinforces that framing. A useful shortcut—echoed in Federal Circuit language such as *Contour IP Holding LLC v. GoPro Inc.* (2024)—is to ask: Is the point of novelty a technological solution to a technological problem?

How to Identify Technological Solutions to Technological Problems

Patent eligibility often turns on what the application appears to be "about." If the narrative centers on an insurance or financial arrangement—rather than the technological mechanism that enables it—the claims are more likely to be mischaracterized as an abstract idea and ruled ineligible.

A stronger approach is to discuss the technical problems (system performance, security, interoperability, model reliability, or similar constraints) at the heart of the claimed advance while also detailing the corresponding technical solutions. Many applicants miss this opportunity by describing insurance-related inventions at a high level of abstraction, often eliminating any real chance of issuance. Achieving successful USPTO outcomes is rarely about arguing harder—it is about *building the right record from day one*.

Across the industry, insurance-related companies are finding success protecting a range of innovations. The first step on this path to patent success is working with experienced patent counsel to understand and assess the technological systems that enable and expand their businesses. This work often uncovers important linkages between insurance innovations and related technological advances such as data gathering and cleaning methods for modeling, new AI integrations and advances in machine learning operations, blockchain integration with legacy systems, and backend architectures for efficient, large-volume data processing.

Today, generative AI integration in the face of rapidly changing regulatory environments presents particularly strong opportunities for patent portfolio development. Upstream technical improvements—such as prompt engineering, data cleaning and filtering, and novel training processes—may be eligible for patenting. Downstream improvements may also be patentable, including new methods for training and retraining models, controlling real-world devices and systems, and deploying novel user interface elements designed to ensure model output transparency and explainability.

Industry Players Are Filing Aggressively

Insurance companies have already begun expanding their filings and protecting technological innovations, following in the steps of their fintech peers that already include 10 of the top 200 patent filers in the United States. Some insurance companies have already begun monetizing their patent portfolios to the tune of hundreds of millions of dollars. While the overall industry's grant rate for insurance-related applications hovers just below 50%, Alston & Bird insurance clients do far better than this industry average, achieving allowance rates approaching and, in some circumstances, exceeding 90%.

Companies should evaluate their technology stacks to identify protectable innovations so they do not leave value on the table or allow others to freely copy inventions that required significant time and resources to develop.

Looking ahead, with foundational filings already underway across the industry, we expect an uptick in patent litigation in the insurance space over the next 10 years. The time to build the portfolios needed to survive and thrive in a more litigation-dense landscape is now. ■

Civil Procedure Update

Last edition, we covered Supreme Court cases that were poised to shape procedures for removal to federal court. Two unanimous opinions answer our questions:

Hain Celestial Group v. Palmquist, No. 24-724 (U.S. Feb. 24, 2026).

"This Court has never held that a district court can create jurisdiction through its own mistakes." The Court upheld the Fifth Circuit's ruling that a district court's erroneous dismissal of a defendant before final judgment could not cure the jurisdictional defect of that defendant destroying complete diversity among the parties.

Berk v. Choy, No. 24-440 (U.S. Jan. 20, 2026).

The Court held that a Delaware law requiring an affidavit to accompany medical malpractice complaints conflicted with Federal Rules of Civil Procedure 8 and 12. Therefore, the state procedural statute does not apply in federal court. ■

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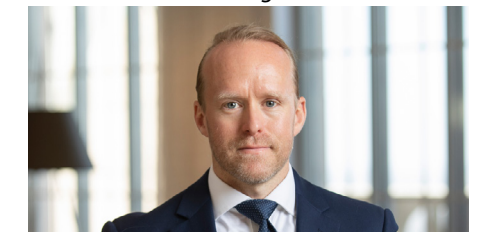
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