

Managing Emerging AI Risk

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RIMS
OREGON CHAPTER

Speaker



Katherine J. Henry

Partner

Chair of Policyholder Insurance Coverage

Bradley Arant Boult Cummings LLP

khenry@bradley.com

(202) 719-8244

Agenda

- AI Basics
- The AI Story Follows the Cyber Story:
 - Silent Coverage
 - Coverage Disputes
 - Exclusions
 - Dedicated Coverage
- Wrinkle in the Storyline: Insurers Also Use AI
- Action Items
- Q&A

AI Basics

Key AI Terms

Artificial Intelligence (AI)

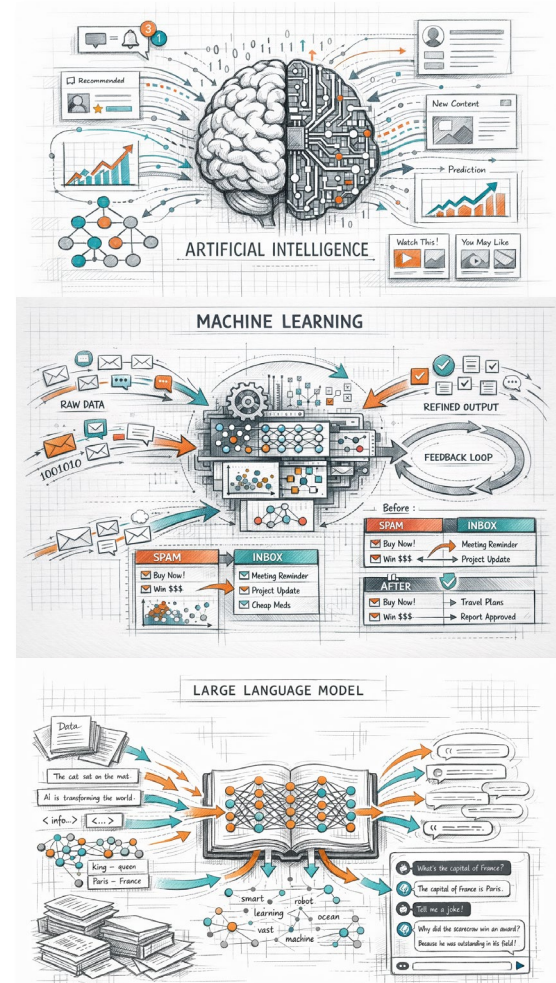
- Machine-based system, generates outputs such as predictions, recommendations
- E.g., social media feeds

Machine Learning (ML)

- Subset of AI that enables systems to learn patterns from data and improves their performance without being explicitly programmed for every task
- E.g., constantly-evolving email spam filters

Large Language Model (LLM)

- Subset of AI trained on text datasets to process and generate human language
- E.g., early ChatGPT iterations



Key AI Terms

Generative AI

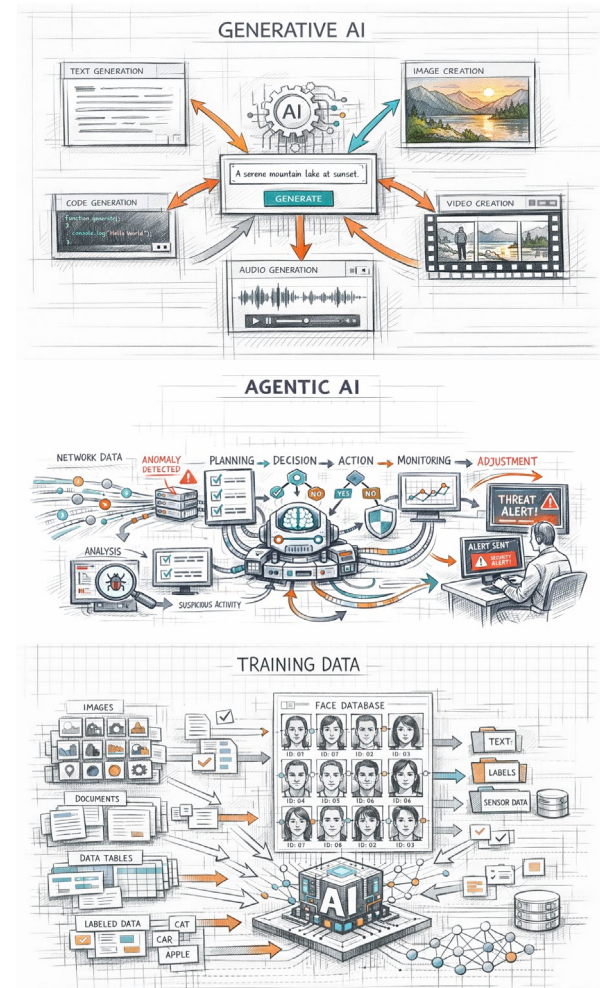
- Broad category of AI systems that generate new content – text, images, audio, code – in response to user prompts
- E.g., Sora video generator (now-shuttered)

Agentic AI

- AI that autonomously plans, decides, and takes sequenced actions to achieve a goal
- E.g., cybersecurity monitoring system that continuously scans for anomalies, investigates, suspicious activity, escalates threats to human staff

Training Data

- The collections of examples an AI model learns from to identify patterns and produce outputs
- E.g., databases of human faces used to train facial recognition systems



Key AI Terms

Physical AI

- AI systems that can perceive, decide, and act in the real world through physical systems like robots, vehicles, or machines
- E.g., autonomous delivery robots or drones

Hallucination

- AI output that seems plausible but is incorrect, fabricated, or not grounded in its training data or in the real-world
- E.g., AI-generated legal memo confidently references laws that do not exist

Enterprise AI

- AI systems deployed inside an organization to run business processes, at scale, using internal data and integrations
- E.g., Microsoft Copilot summarizing lengthy emails in Outlook



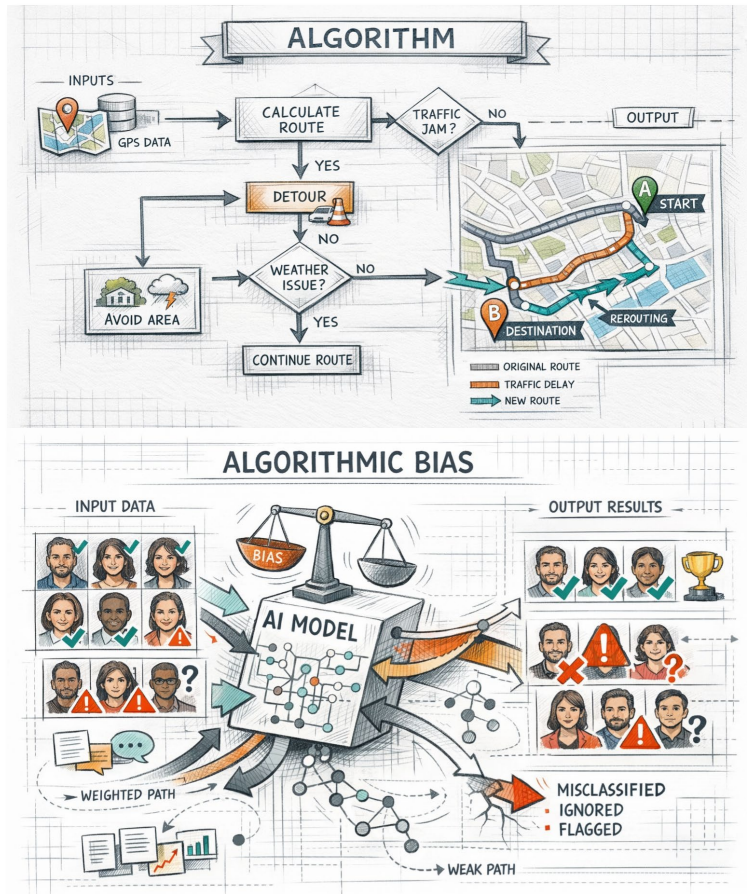
Key AI Terms

Algorithm

- The logic and procedures a system follows to process inputs and produce an output
- E.g., GPS calculating fastest route, adjusts route based on traffic or weather

Algorithmic Bias

- When an AI system produces systematically skewed outcomes because of biases in AI system design, biased training data, or underlying false assumptions
- E.g., facial-recognition systems accurately identifies adult faces, but not adolescent faces





AI Basics: What Risk Managers Should Know

AI: What Risk Managers Should Know

Generative AI systems are probabilistic, not deterministic:

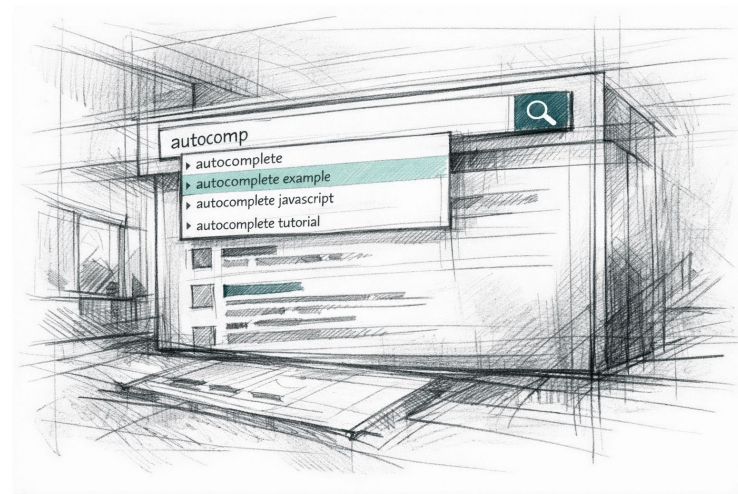
- Autocomplete, not Calculator
- Errors can happen

Roles matter:

- ‘Deployer’ vs. ‘Developer’ vs. ‘Integrator’
- Different legal requirements for each role
- Downstream liability to deployers
- Underwriting may tailor to deployer governance

The AI footprint is broad and expanding:

- Productivity software
- HR systems
- Customer-facing tools



AI: What Risk Managers Should Know

Categories of AI output failures include:

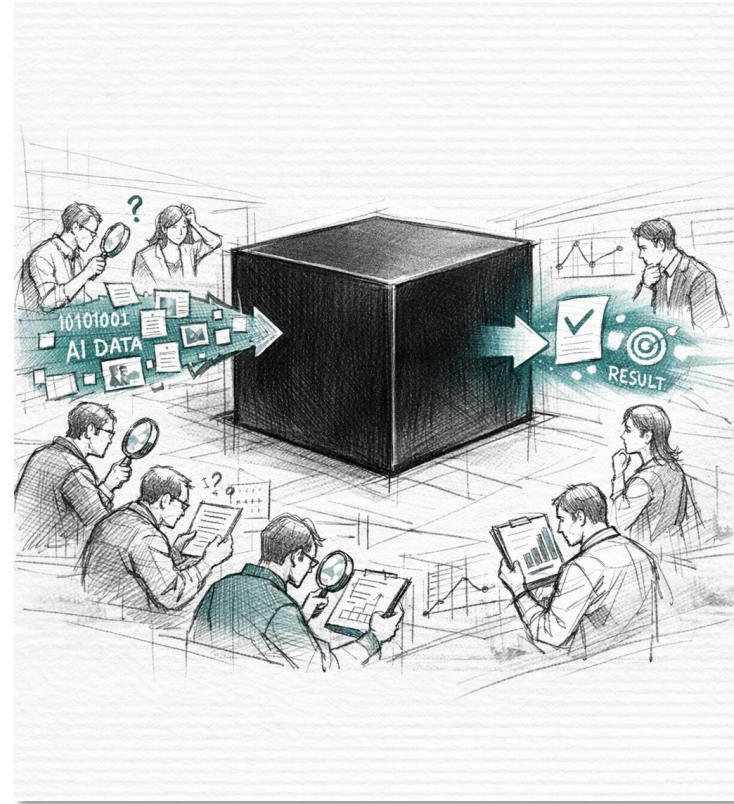
- Hallucination
- Bias or algorithmic discrimination
- Model drift
- Adversarial attacks

The Black-Box Problem

- When LLMs cannot explain *why* they produced a given output

Agentic AI is the emerging frontier

- Scheduling and sending communications
- Executing code
- Transacting



AI: What Risk Managers Should Know

Emerging Regulatory Landscape

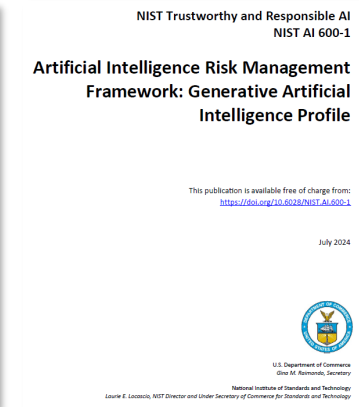
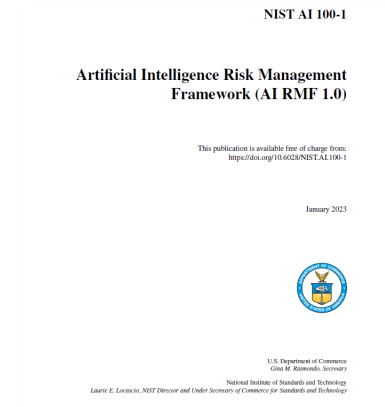
- Colorado AI Law
- EU AI Act
- Sector-specific regulatory bodies, e.g., FTC (consumer protection), SEC (securities), EEOC (employment)
- Emerging patchwork of state AI laws in 2026-27, echoing state privacy laws

National Institute of Standards and Technology

- AI Risk Management Framework (RMF), 2023
- AI RMF Playbook, 2023
- AI RMF: Generative AI Profile, 2024

AI Model Pace Gap

- AI models advance on roughly 6-month release cycles, makes annual coverage review no longer sufficient



NIST AI RMF Playbook

The Playbook provides suggested actions for achieving the outcomes laid out in the [AI Risk Management Framework \(AI RMF\) Core \(Tables 1 - 4 in AI RMF 1.0\)](#). Suggestions are aligned to each sub-category within the four AI RMF functions (Govern, Map, Measure, Manage).

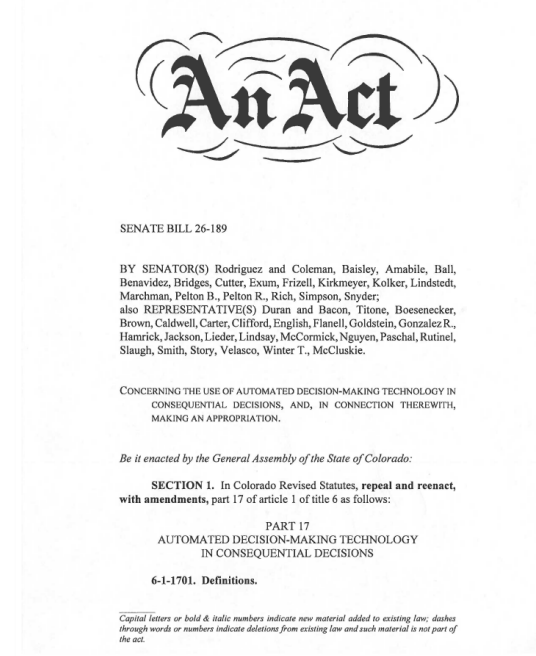
The Playbook is neither a checklist nor set of steps to be followed in its entirety. Playbook suggestions are voluntary. Organizations may utilize this information by borrowing as many – or as few – suggestions as apply to their industry use case or interests.



AI: What Risk Managers Should Know

The Colorado AI Law

- May 2026, Gov. Polis signed “Automated Decision-Making Technology in Consequential Decisions” (SB26-189)
- SB26-189 repeals and replaces prior 2024 statute
- New framework governs AI systems used to materially influence ‘consequential decisions’ affecting individuals
- Insurance is 1 of 7 ‘covered domains’
- Framework reaches underwriting, pricing, coverage, claims adjudication, and other determinations
- Effective January 1, 2027
- Possible future Colo. AG and Insurance Comm’r rulemaking



AI Story = Cyber Story

The AI Story Is the Cyber Story

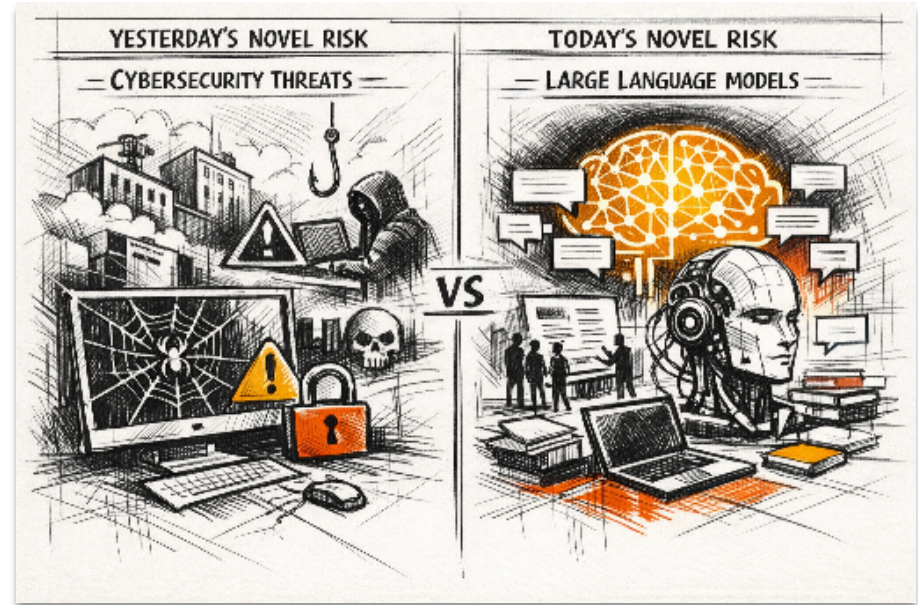
Phase 1: Silent coverage

Phase 2: Coverage disputes

Phase 3: Exclusions

Phase 4: Dedicated coverage

*The critical difference between AI and cyber:
insurers are also using AI.*



Phase 1: Silent Coverage for AI Risks

Where Traditional Coverage May Still Respond (Silent AI Coverage)

CGL for Injury / Damage from AI-Caused Harm

ISO occurrence form (CG 00 01 04 13) does not expressly exclude AI, so AI-triggered BI/PD should fall within the basic grant of coverage.

E&O / Professional Liability – AI-Assisted Errors

When AI tools produce errors in professional services—lending decisions, investment advice, project scheduling—E&O or banking practices liability coverage should respond.

Cyber – AI As Attack Vector vs. Liability Source

Cyber policies should respond when AI contributes to an otherwise covered loss or liability— AI-powered phishing, deepfake-enabled fraud, AI-assisted data breaches or failures — absent an AI exclusion.

Phase 2: Coverage Disputes

Policyholders Seeking Coverage for AI-Related Claims

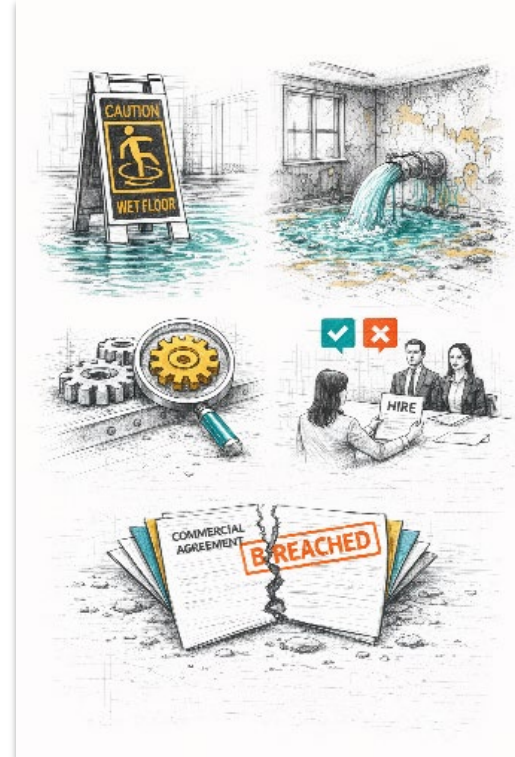
CGL – The “occurrence” question

- Social media platform intentionally designed to hook users. Are those “accidents” under a CGL policy if users become addicted?

EPL – AI-driven employment decisions already generating discrimination claims

Health Plans – The algorithmic discrimination.

- Medicare Advantage insurers using AI to cut off post-acute and skilled-nursing coverage at scale.
- Can policyholders compel coverage when denial wasn’t made by physician?



Phase 3: New Exclusions

Insurers Respond with Exclusions that Eliminate Silent AI Coverage

Standardized Exclusions

- ISO released two new CGL endorsements (CG 40 47 and CG 40 48) effective January 2026, excluding BI, PD, and personal/advertising injury arising out of generative AI.
- CG 40 47 and 40 48 define generative AI as “a machine-based learning system or model that is trained on data with the ability to create content or responses.”

COMMERCIAL GENERAL LIABILITY
CG 40 47 01 26

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – GENERATIVE ARTIFICIAL INTELLIGENCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:
This insurance does not apply to:
"Bodily injury" or "property damage" arising out of "generative artificial intelligence".

B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:
This insurance does not apply to:
"Personal and advertising injury" arising out of "generative artificial intelligence".

C. The following definition is added to the Definitions section:
"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

COMMERCIAL GENERAL LIABILITY
CG 40 48 01 26

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – GENERATIVE ARTIFICIAL INTELLIGENCE (COVERAGE B ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:
This insurance does not apply to:
"Personal and advertising injury" arising out of "generative artificial intelligence".

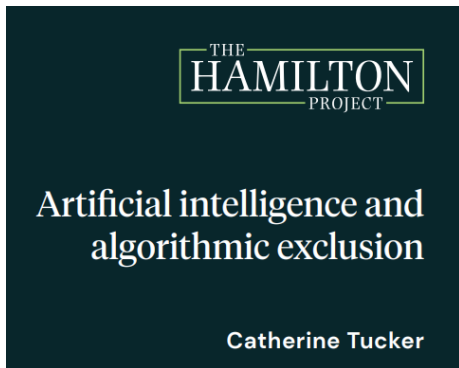
B. The following definition is added to the Definitions section:
"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

Insurers Respond with Exclusions that Eliminate Silent AI Coverage

Insurer-Specific Exclusions

Individual insurers are drafting their own exclusions.

- Berkley’s “absolute” AI exclusion
- Hamilton’s generative AI exclusion (for professional liability)



Source: <https://www.hamiltonproject.org/publication/policy-proposal/artificial-intelligence-and-algorithmic-exclusion/>

Berkley’s “Absolute” AI Exclusion

Berkley’s new exclusion, intended for use in the company’s D&O, E&O, and Fiduciary Liability insurance products, purports to broadly exclude coverage for “any actual or alleged use, deployment, or development of **Artificial Intelligence**.” The full endorsement states:

The **Insurer** shall not be liable to make payment under this Coverage Part for **Loss** on account of any **Claim** made against any **Insured** based upon, arising out of, or attributable to:

(1) any actual or alleged use, deployment, or development of **Artificial Intelligence** by any person or entity, including but not limited to:

(a) the generation, creation, or dissemination of any content or communications using **Artificial Intelligence**;

(b) any **Insured’s** actual or alleged failure to identify or detect content or communications created through a third party’s use of **Artificial Intelligence**;

(c) any **Insured’s** inadequate or deficient policies, practices, procedures, or training relating to **Artificial Intelligence** or failure to develop or implement any such policies, practices, procedures, or training;

(d) any **Insured’s** actual or alleged breach of any duty or legal obligation with respect to the creation, use, development, deployment, detection, identification, or containment of **Artificial Intelligence**;

(e) any product or service sold, distributed, performed, or utilized by an **Insured** incorporating **Artificial Intelligence**; or

(f) any alleged representations, warranties, promises, or agreements actually or allegedly made by a chatbot or virtual customer service agent;

(2) any **Insured’s** actual or alleged statements, disclosures, or representations concerning or relating to **Artificial Intelligence**, including but not limited to:

(a) the use, deployment, development, or integration of **Artificial Intelligence** in the **Company’s** business or operations;

(b) any assessment or evaluation of threats, risks, or vulnerabilities to the **Company’s** business or operations arising from **Artificial Intelligence**, whether from customers, suppliers, competitors, regulators, or any other source; or

(c) the **Company’s** current or anticipated business plans, capabilities, or opportunities involving **Artificial Intelligence**;

(3) any actual or alleged violation of any federal, state, provincial, local, foreign, or international law, statute, regulations, or rule regulating the use or development of **Artificial Intelligence** or disclosures relating to **Artificial Intelligence**; or

(4) any demand, request, or order by any person or entity or any statutory or regulatory requirement that the **Company** investigate, study, assess, monitor, address, contain, or respond to the risks, effects, or impacts of **Artificial Intelligence**.

Source: <https://natlawreview.com/article/continued-proliferation-ai-exclusions>

Insurers Respond with Exclusions that Eliminate Silent AI Coverage

Scope Across Policy Lines

AI exclusions are not limited to CGL

- AIG, Great American, and WR Berkley introduced exclusions across D&O, E&O, and cyber lines



Exclusions: Eliminating Silent AI Coverage

Overbroad Language Risk

Some exclusions use language like “in any way connected to” AI, which could sweep in claims only tangentially related to AI use.

Preexisting Technology Exclusions

Many CGL and professional liability policies already exclude losses “arising out of” technology products or software through endorsements like ISO CG 22 99. The new AI exclusions stack on top.

Regulatory Violations Exclusions

Statutes like the Colorado AI Act imposes duties on AI “deployers” (parties that use AI systems), and violations may trigger intentional/wrongful exclusions.

COMMERCIAL GENERAL LIABILITY
CG 22 99 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PROFESSIONAL LIABILITY EXCLUSION –
WEB SITE DESIGNERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to “bodily injury” or “property damage” arising out of any act, error or omission with respect to web site designer or consultant services, rendered by or that should have been rendered by:

a. The insured; or

b. Any person or organization:

(1) For whose acts, errors or omissions the insured is legally responsible; or

(2) From whom the insured assumed liability by reason of a contract or agreement.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved any act, error or omission with respect to web site designer or consultant services as described above.

Phase 4: New AI Specific Coverage

New AI-Specific Coverage

- As with cyber, dedicated AI insurance products are beginning to emerge—affirmative AI liability coverage
- Start-up insurers like Testudo and Armilla (backed by Lloyd’s) have launched products specifically designed to fill gaps created by the new exclusions



Generative AI is a new category of risk: Existing policies fall short

To address policy gaps created by exclusions in traditional insurance products, we've built dedicated third-party liability coverage for companies deploying generative AI systems.

Our claims-made and reported policy covers defense costs and third-party liabilities arising from Generative AI outputs, helping companies manage the costs of AI lawsuits and litigation.

- | | |
|--|--|
| 01. Bodily injury and property damage | 02. Financial loss arising from negligence & misrepresentation |
| 03. Infringement of intellectual property & defamation | 04. Unauthorized disclosure of protected information |



Affirmative AI Coverage Tailored to Your Needs

Armilla's coverage solutions protect both enterprises and AI vendors from the unique challenges of artificial intelligence. Our specialized underwriting enables you to **build trust, reduce risk, and boost adoption**—regardless of where you sit in the AI ecosystem.



The Wrinkle: Insurers Use AI, Too

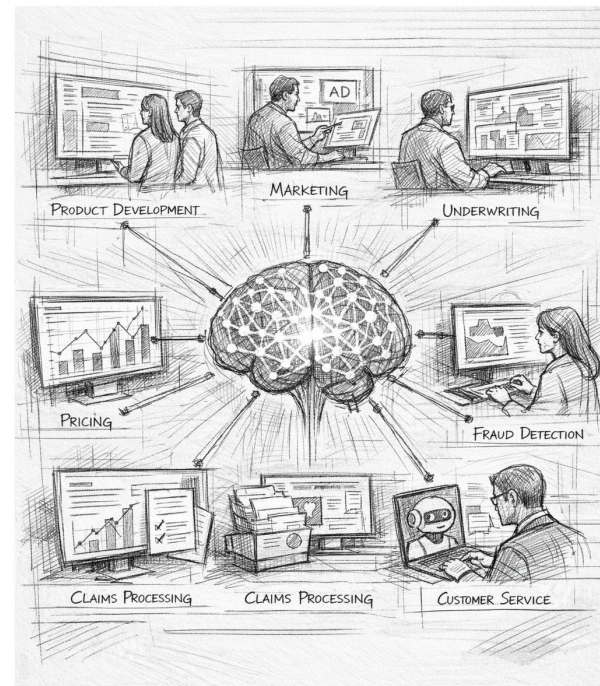
AI Across the Insurance Lifecycle

Multiple AI deployments:

- Product development, marketing, underwriting, pricing, claims administration, fraud detection, customer service, etc.

Insurers probe policyholders about their AI use at renewal:

- D&O insurers probe AI governance
- E&O insurers probe professional services definitions
- EPL insurers probe AI-assisted employment decisions
- Cyber insurers probe what data AI tools process.



Disputes Over Insurers' Own Use of AI

Breach of Contract

In *Lokken*, Medicare Advantage customers sued UnitedHealth for using an AI program (“nH Predict) to deny post-acute care coverage when its insurance documents promised decisions by clinical services staff” and “physicians.”

The court allowed breach of contract and good faith claims to proceed.

Unjust Enrichment

In *Barrows*, a court distinguished *Lokken* and allowed unjust enrichment and common law fraud claims to proceed against Humana, finding that the insurer charged premiums for individualized human assessment while delegating the process to AI.

Discovery into Insurer AI Use

A subsequent order in *Lokken* compelled UnitedHealth to produce documents about nH Predict’s development, implementation, government investigations, employee incentives, and AI Review Board oversight—for the full putative class, not just named plaintiffs.

Regulatory Standards

Regulations specify that insurer actions must comply with unfair trade practices and unfair claims settlement practices statutes regardless of the methods used.

This means the AI conversation is two-sided: you need to understand both how your organization’s AI use affects your coverage and how your insurer’s AI use affects your claims.



The ESTATE OF Gene B. LOKKEN,
individually and on behalf of all others
similarly situated, et al., Plaintiffs,

v.

UNITEDHEALTH GROUP, INC.; UnitedHealthcare, Inc.; naviHealth, Inc.;
and Does 1–50, Defendants.

Civil No. 23-3514 (JRT/DJF)

United States District Court,
D. Minnesota.

Signed February 13, 2025

United States District Court, W.D. Kentucky,
Louisville Division.

The ESTATE OF Joanne BARROWS, Susan
Hagood, Sharon Merkle, Lorraine Kohl,
and Killy Alani, Individually and on Behalf
of All Others Similarly Situated, Plaintiffs

v.

[HUMANA, INC.](#), Defendant

Civil Action No. 3:23-cv-654-RGJ

Signed August 14, 2025

Filed August 15, 2025

Action Plan

7 Step Plan

1. Audit Your Current Policies

Review your current CGL, E&O, D&O, EPL, and cyber policies for:

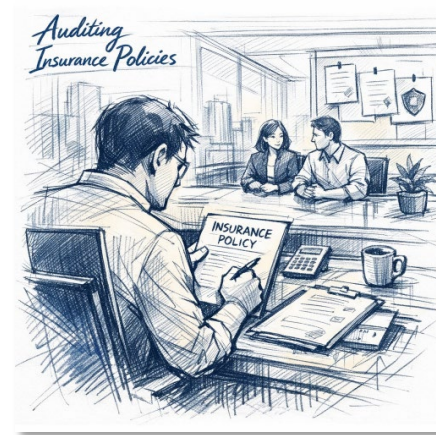
- a) Preexisting professional services or technology exclusions that could be applied to AI-related claims; and
- b) Any new AI-specific exclusions or endorsements added to your last renewal.

2. Map Your AI Footprint Before Your Application

Know who in your organization is using AI, how, and for what purpose. Insurers are asking increasingly granular questions, and incomplete answers could expose you to rescission claims.

3. Negotiate at Renewal, Not After a Loss

If your insurer insists on an AI exclusion, push for narrower language—“directly arising out of” rather than “in any way connected to.” Ask for targeted carve-backs that match your actual AI risk profile.



7 Step Plan

4. Build and Document Your AI Governance

Documented AI governance is becoming underwriting input—insurers treat it the way they treat cybersecurity controls. Organizations with governance protocols are viewed as better risks.

5. If a Claim Is Denied, Ask About AI

Find out whether AI played a role in your insurer's decision.

Courts are compelling discovery into insurer AI use, and undisclosed reliance on AI for claims decisions is emerging as a basis for breach of contract and unjust enrichment claims.



7 Step Plan

6. Review AI Vendor Contracts for Liability Gaps and Warranty Disclaimers

AI vendor contracts may cap the vendor's liability at 12 months of fees and offer no performance warranties — meaning your organization, as the deployer, bears most of the liability for AI-driven harm.

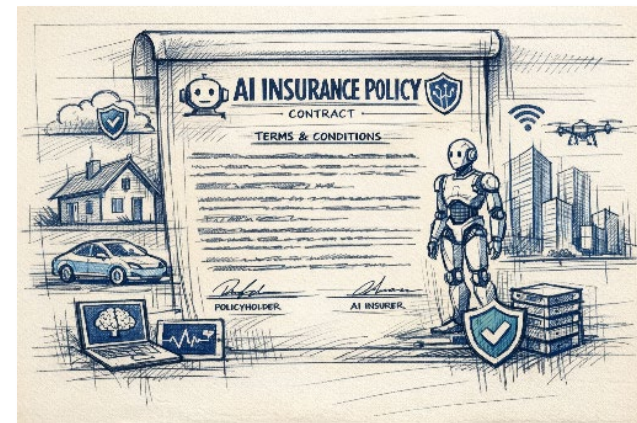
Before you can assess your insurance gap, you need to understand what your vendor has disclaimed



7. Explore Dedicated AI Insurance Products to Fill Gaps in Traditional Coverage

Traditional policies cover fragments of AI risk, but no single policy covers the full spectrum.

Purpose-built AI insurance products — including performance guarantees, litigation-triggered liability coverage, and vendor warranty policies — are entering the market specifically to address exposures that CGL, E&O, and cyber policies will not cover.



Questions

Katherine's Bio

Katherine Henry is the chair of Bradley's Policyholder Insurance Coverage Practice Group. She focuses on meeting clients' business objectives in matters involving insurance.

She regularly advises risk managers, legal staff, company executives, and brokers on complex property and casualty insurance programs involving manuscript and specialty policies, including programs incorporating various risk transfer and financing mechanisms, such as fronting programs, paid deductible programs, and collateral agreements.

She advises clients on insurance procurement and renewal, including terms and conditions for standard-form and manuscript insurance policies of all types; claims submission and management; prospects for obtaining coverage of a disputed claim; transactional due diligence, recovering proceeds from insolvent insurers; and locating historic insurance policies.

Katherine's practice spans all aspects of policyholder insurance coverage, from initial policy placement and renewals to claims management and litigation, both in the United States and abroad.



Katherine J. Henry

Partner

Chair of Policyholder Insurance Coverage
Bradley Arant Boult Cummings LLP

khenry@bradley.com

(202) 719-8244



POLICYHOLDER INSURANCE COVERAGE

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Drawing on decades of experience, our Policyholder Insurance Coverage team provides commercial policyholders with sophisticated representation in all aspects of property and casualty insurance. We focus on efficiently maximizing the value of our clients' insurance portfolios consistent with their business objectives.

Our team is led by Katherine Henry, who is recognized in *Chambers USA* for Policyholder Insurance. We handle matters involving virtually every type of property and casualty insurance policy available in the market today. This diverse experience allows our team to advise on coverage issues and exposures under commercial auto (including UM, UIM, and PIP); commercial general liability, crime, cyber, directors and officers and entity liability (for both public and private companies); errors and omissions and professional liability (including Owners Protective Professional Indemnity (OPPI)); employment practices liability; fidelity bonds; fiduciary liability; flood, inland marine, pollution and environmental; products liability; property (including BI and CBI); title insurance; workers' compensation; and wrap-up insurance programs (OCIPs and CCIPs).

CONTACT



Katherine J. Henry

PARTNER

202.719.8244
khenry@bradley.com

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By [Justin P. Gunter](#) on May 5, 2026

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you.**