









Artificial Intelligence and the Designer: Standard of Care and Insurance Implications

ACEC Deep South Convention Saturday, July 26, 2025 | Miramar Beach, FL

Roger C. Guilian, J.D., CRIS
EPIC Insurance Brokers & Consultants - Greyling Division
ACEC Business Insurance Trust





Roger Guilian, J.D., CRIS | Senior Vice President





20-Year Industry Attorney & Risk Management Professional

26 Years in Legal Practice

General Counsel for ENR Top-100 Firm (18 Years)

Construction Risk Insurance Specialist (CRIS)

ACEC Risk Management Committee

ACEC PAC Millennium Club

ACEC Legal Counsel Forum

ACEC Business Resources & Education Committee

Trustee, ACEC Business Insurance Trust (2020-2022)

ABA Forum on Construction Law

Alabama Bar Construction Law Section President, 2018-19

Admitted to the Bar of the Supreme Court of the United States

Licensed Property/Casualty Broker in all 50 States





2005-2014



2014



2014-Present



2018-Present



Greyling is the Architects & Engineers Division of EPIC Insurance Brokers & Consultants

Greyling was acquired by EPIC in 2014

EPIC ranks 17th among the Top 100 U.S. brokers

2018: Greyling/EPIC is selected as Broker and Program Administrator for the ACEC Business Insurance Trust

Greyling/EPIC has more than 1,300 A&E firm clients

We employ 4 former general counsels and 3 former private practice attorneys who specialize in A&E Risk Consulting

94+ combined years of industry C-Suite experience



AGENDA

- 1. You Are *The One*, Neo
- 2. How is AI Changing the A/E/C Space?
- 3. How Are Your Peers Embracing Al?
- 4. Is Al Altering the Standard of Care?
- 5. What Designers Can Do To Mitigate Risk
- 6. Al in the Insurance Industry
- 7. Q&A, Discussion





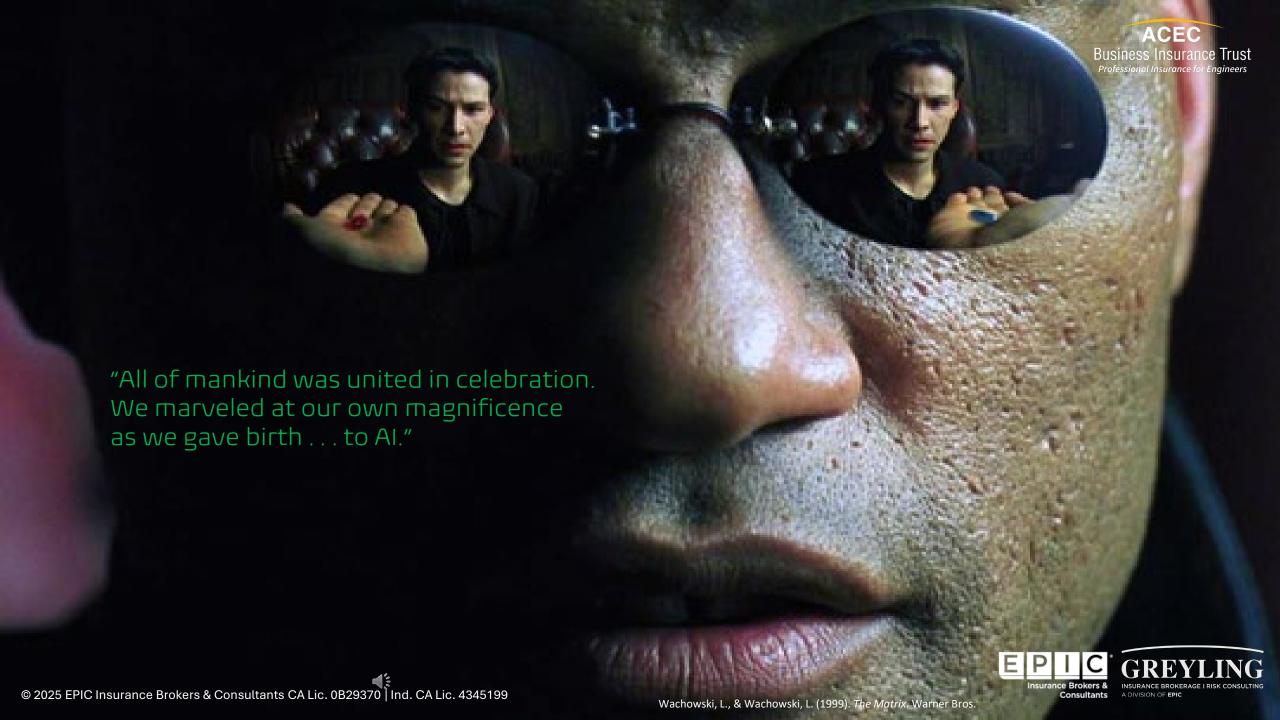




What If I Told You That Generative Al Is Only As Good As You Are?



MakeAGIF.com





In preparation for this presentation on Artificial Intelligence, Microsoft Copilot was tasked with generating a Greyling logo based on the 1999 motion picture "The Matrix"





"Generate a Greyling Insurance Brokerage logo with the letters made out of The Matrix Code."

What we got was, in Morpheus's words, "a little weird."













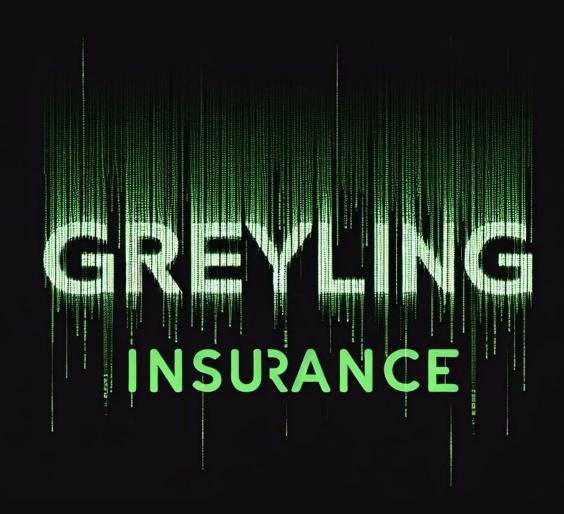


"Generate a Greyling Insurance Brokerage logo with the letters made out of The Matrix Code."

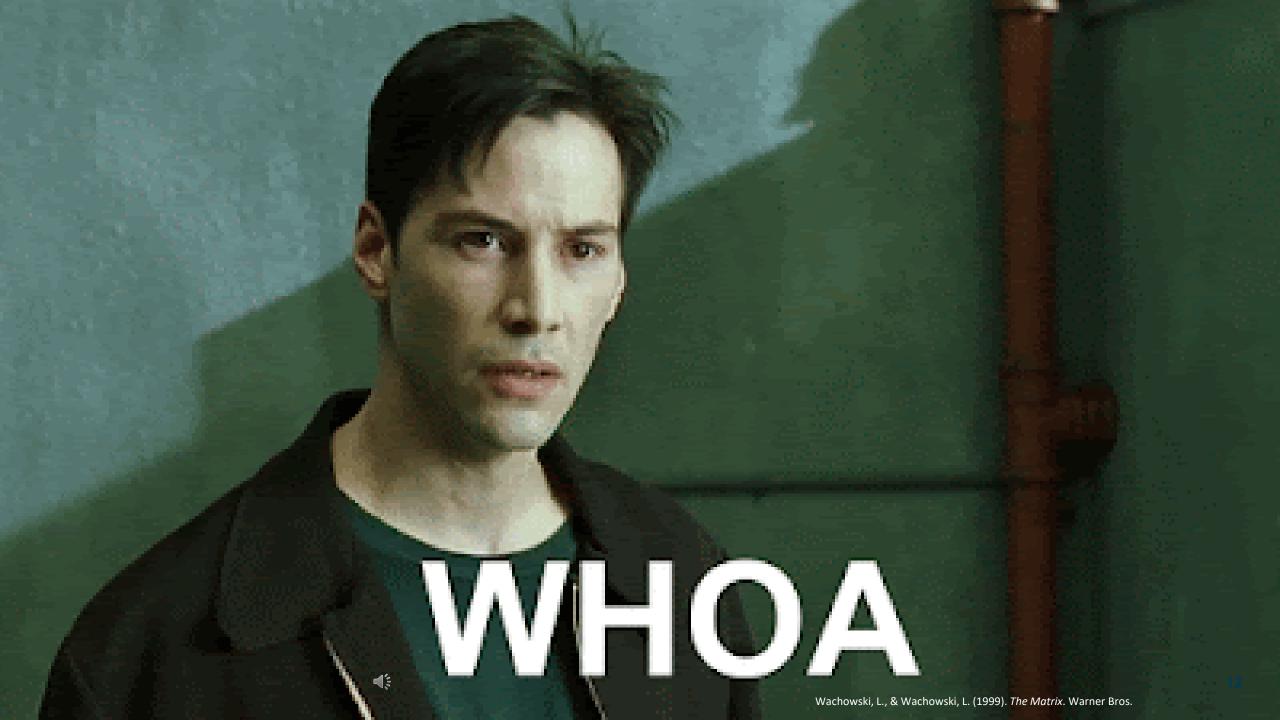
What we got . . . was *The One*.













What did we learn from this?

While undoubtedly helpful and promisingly efficient, Generative AI is only as good as your query input and the universe of data from which it pulls.





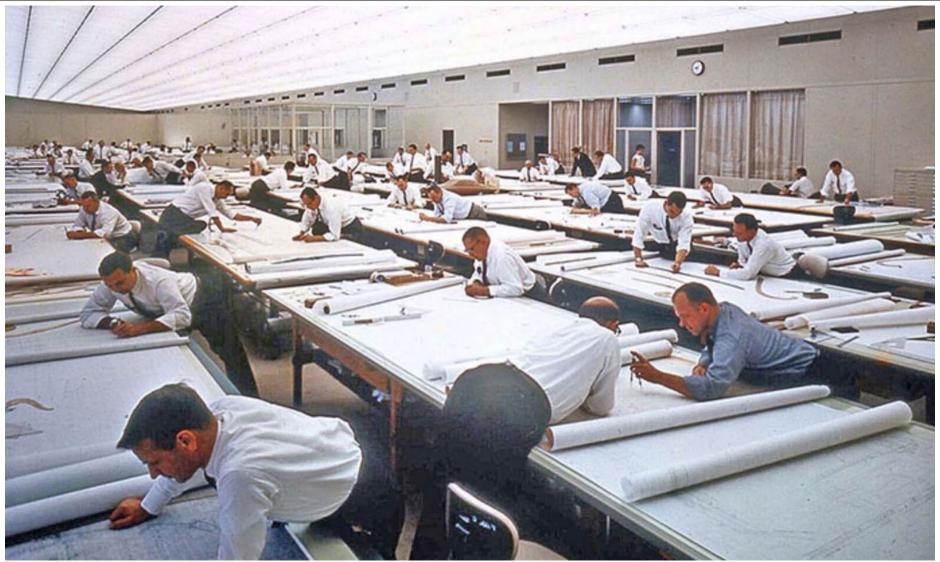




How is Al Changing the A/E/C Space?







Life Before The Invention Of Autocad Photos From 1950 To 1980 | Rare Historical Photos



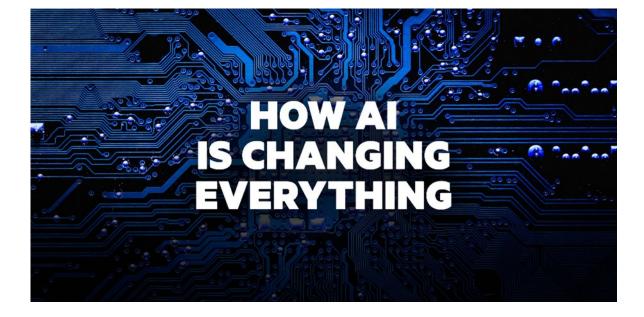


Clients are continuously bombarded with the promise of Al.

"Al can take on the most difficult problems and solve them in no time"



"Al will change everything"







Clients' Expectations Are Being Raised

Believing Media
Expecting an Elevated SOC
Faster
Cheaper
Better

Designers Are Making Promises Based on Al

In Their Marketing Efforts
Volunteering an Elevated SOC

Engineers Accepting Overly Aggressive Schedules Because of Technology, Al Relying on Technology Without Sufficient Professional Oversight

"AI will speed data analysis and help project teams make faster, better decisions with a greater degree of certainty." – Ro Bhatia, CEO of PlanHub (Let's Chat About AI: How Design and Construction Firms Are Using ChatGPT, John Caulifield, Building Design+Construction, April 24, 2023



Firms Are Creating Their Own Generative Platforms. A&E Firms' Websites Are Replete With Words Like:

Computational Geometry

Machine Learning

Generative Artificial Intelligence

Predictive Models

Built on Large Language Model (LLM) and AI Constructs

Specification Generation & Compliance

Closed-Loop (Universe of Proprietary Internal Data) Benchmarking





Facilitating and Encouraging Claims Against Designers

Recent Claim Against a Design Professional (Not an EPIC/Greyling Client):

Designer sent an electronic set of plans to the contractor

The contractor ran the plans through an Al platform

The contractor sent back 30 Change Order Requests within an hour of receiving plans

Large COR claim already submitted by the contractor

That Begs the Question: Why Shouldn't We Be Running Our Plans Through AI Constructs to Find Potential Breeding Grounds for Disputes, Clean Them Up, and Hopefully Avoid Claims?



Two Distinct Considerations



Al Used to Arrive at Design Decisions, i.e. Professional Services



An architect asked AI to design skyscrapers of the future. This is what it proposed

Al Used for General Business Purposes

- Marketing
- Communications
- Human Resources
- Talent Acquisition
- Information Technologies
- Facilities Management
- Operations









How Are Your Peers Embracing Al?



Greyling 2024 In-House Counsel Forum Al Survey



32 Firms Provided Responses About Al

6% > \$1B

16% > \$500M

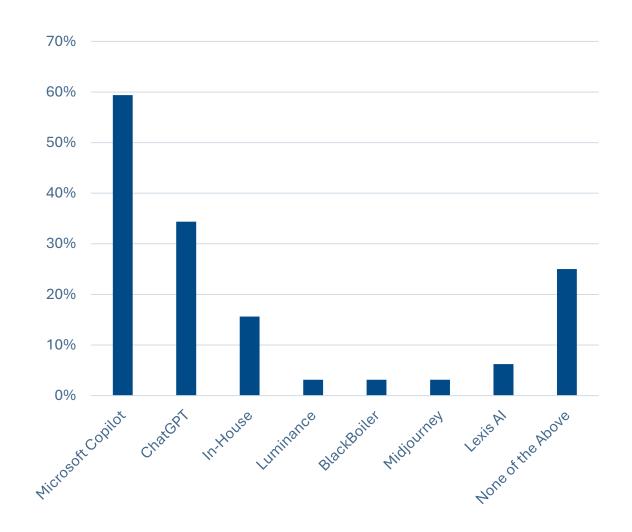
40% \$100M - \$250M

75% Using AI in some capacity

28% Using AI in their design work

25% Using AI in Contract Reviews

15% Using AI to fill gaps in staffing needs

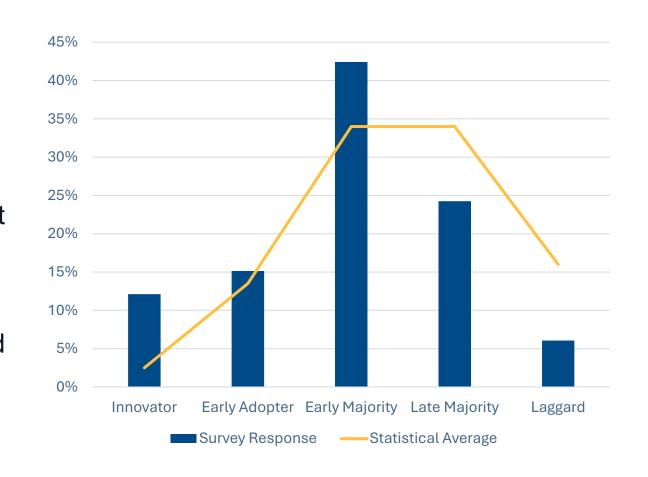




Greyling 2024 In-House Counsel Forum Al Survey



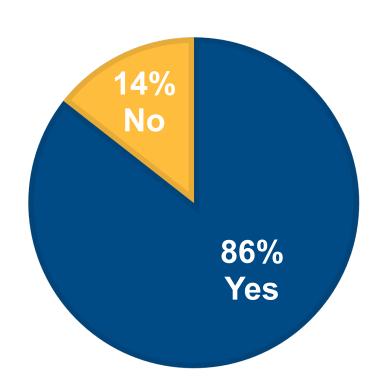
- Innovator (12%) The first to adopt a new idea or project; willing to take risks; seen as adventurous.
- Early Adopter (15%) Next up after Innovators; seen as respected leaders within industry; carefully adopts new ideas early.
- Early Majority (42%) Adopts new ideas just before the average person; Deliberate and thoughtful in adoption process.
- Late Majority (24%) Adopts an innovation only after the majority of society has accepted it; skeptical and cautious.
- Laggard (6%) Last to the party; Bound by tradition and skeptical of change.



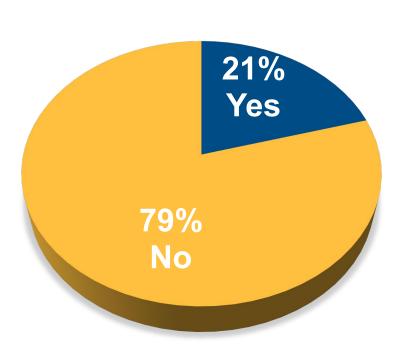


Greyling 2024 In-House Counsel Forum Al Survey

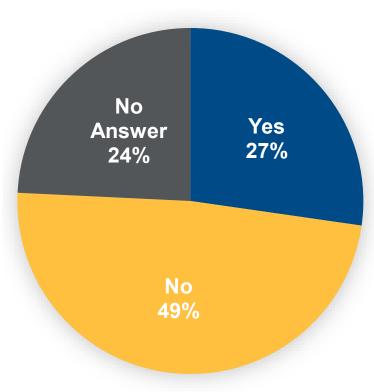




"Does Your Firm Have Formal Guidelines Around AI?"



"Do Other Parties On Your Projects Use AI?"



"Does Your Firm Evaluate & Discuss Al's Impact On Your Standard of Care?"





Firms Are Incorporating Generative Al Into Their Businesses

Proposals, Technical Analysis, Project Management & Workflow Optimization

Microsoft CoPilot, ChatGPT, and the like

Development of In-House Capabilities and Models



Peer Firm Usage of Artificial Intelligence



A Recent Poll of Engineering Firm Conference Attendees Revealed:

Proposals, Marketing, & Business Development 86% of Attendees

Technical Analysis & Deliverable Production 36% of Attendees

Project Management & Resource Planning 23% of Attendees

Coding & Workflow Optimization 23% of Attendees



ACEC AI Risk Subcommittee AI Usage Guidelines



GUIDELINES ON THE USE OF AI BY DESIGN PROFESSIONAL FIRMS ACEC RISK MANAGEMENT COMMITTEE – AI RISK SUBCOMMITTEE ACEC TECHNOLOGY COMMITTEE JULY 2024

"Purpose and Overview: The purpose of these Guidelines is to provide information that design professionals may take into account in order to promote responsible, professional, and ethical behavior with respect to the adoption and usage of AI in their businesses, including the design professional firm's policies, culture, confidentiality requirements, and contracts with clients."









Is Al Altering the Standard of Care?





Major Determiners of the Designer's Standard of Care:

Contract Language

Reported Appellate Opinions

Industry-Published Standards, Guidelines, Position Statements

- ACEC
- AIA
- NSPE
- DBIA
- ASCE
- CMAA

The Designer's Conduct and Promises Regarding the use of Al

"Faster, Better, Cheaper"





"Standard of Care: The standard of care for all professional and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Consultant."

Engineers Joint Contract Documents Committee (EJCDC) E-570-2014 Agreement Between Engineer and Consultant for Professional Services





ASCE Policy Statement 573 Artificial Intelligence and Engineering Responsibility

The American Society of Civil Engineers (ASCE) recognizes the growing significance of Artificial Intelligence (AI) in the field of civil engineering, however ASCE believes that the civil engineer must maintain responsibility for project planning, designing, building, operations, maintenance, and the protection of the public health, safety, and welfare. Al cannot serve as a replacement for the professional judgement of a licensed Professional Engineer.





ASCE Code of Ethics, October 2020

CODE OF ETHICS

1. Society

Engineers

h. Consider the capabilities, limitations, and implications of current and emerging technologies when part of their work





The professional engineering and architecture statutes have not changed.

The Designer or Record is still responsible for the design.

All engineering and architecture is expected to be completed under the direct supervision / responsible charge of the Designer or Record.

Self-regulated industry guidelines are unanimous as to handling of AI.











What Engineers Can Do To Mitigate Risk



Al Liability Matrix

| Al Output | DP Decision | Design | Potential Liability |
|-----------|--------------------|--------|---------------------|
| Good | Follows AI | Works | No |
| | | Issue | Yes |
| | Rejects Al | Works | No |
| | | Issue | Yes |
| Bad | Follows AI | Works | Yes |
| | | Issue | Yes |
| | Rejects Al | Works | No |
| | | Issue | No |

What Designers Can Do To Mitigate Risk



Avoid Overpromising & Elevating the Standard of Care

There is considerable hype in the media about the transformative power of Artificial Intelligence. Be cautious about promising clients what can be delivered.

Be careful not to promise perfection, reduced errors, faster delivery, etc. Yes, some such statements may be helpful to win the project; but be cautions about what gets into the proposal and the contract.

e.g., Incorporation-by-reference clauses

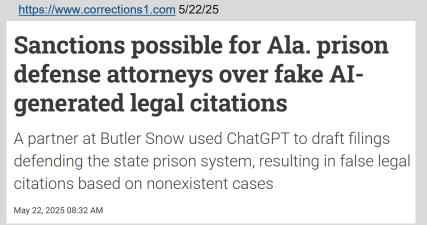
Be clear on what is possible to deliver today, what has been properly QA'd and what can be relied on to deliver tomorrow. Be clear on what the tools will cost and who will be paying the licensing fees (Client or Designer).

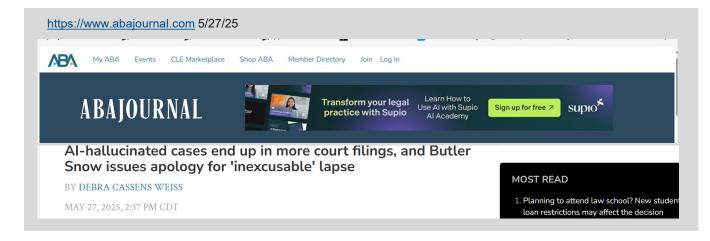




Al Cannot Replace the Human Element – Are Engineers Next?













Secure Sufficient Compensation and Time in Contracts

Al and Machine Learning tools may be deployed on the project, but a Design Professional still needs to take responsibility for the work product. Principal in Charge over Al and human efforts.

Al and Machine Learning tools may actually create more work than more traditional design methods. Yes, Al can create 1,000 options of interior floor plans but who has the time to go through this number of options, explain them to the client, and lead a decision-making effort?





Be Clear When Services Are No Longer Purely Professional Services

Terms & Conditions appropriate for design services may not be appropriate for digital services or for the sale of software.

Use the appropriate contracting methods and the appropriate terms & conditions.

Where digital services are being offered, is there an appropriate "Service Level Agreement" in place? Do you have the resources in place to deliver to the "Service Level Agreement"?





Al & Machine Learning: Employ the Correct Data

Do you have the right staff and/or consultants in place to deliver the service?

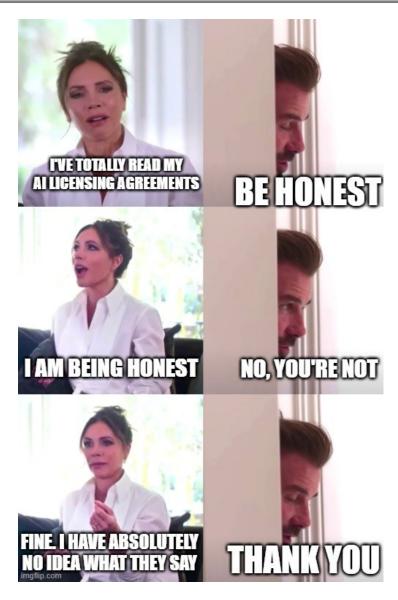
Do you have good quality data that is appropriately curated? Without good data most of the AI / ML algorithms deliver poor results.

Remember Creepy Dystopian Melting Pac-Man Logo Guy?

Generative AI is only as good as the data with which it's fed.







Who Here Has Actually *Read* the ChatGPT and Microsoft Copilot Licensing Agreements?

Be Honest.





Address Licensing and Ownership of Data and Computer Models

Explicitly address licensing, ownership, & maintenance issues around data and computer models in your contracts. Do not assume that something will be figured out during the project.

Develop an Acceptable Use Policy (AUP) for all users of software and technology products.





Address Artificial Intelligence Contractually

Use of Artificial Intelligence

To the extent that Consultant uti

ensuring fairness, accountability

Consultant represents th

no Protected Information will be combined with other data that could expose such Protected Consultant commits to a Information to individuals or entities that are not authorized to receive any such Protected Information. Upon Owner's request, Consultant must provide Owner with a detailed explanation

thorough review by qualified personnel of all inputs, Work Product, and/or deliverables generated by any AI tool or solution in providing any Services, including without limitation, a review of any bias in the AI tool, compliance with applicable law associated with utilizing AI (including required notices or disclosures), validation of selected inputs, verification of all or representative samples

of the generated results, and con C. no Protected Information will Information to individuals or Information. Upon Owner's red of the operations and data sourc

All AI-generated content, data, and related intellectual property developed or created by Consultant in the course of performing the Services will remain the exclusive property of the Owner in accordance with the terms of this Agreement. Consultant is responsible for obtaining any and all necessary consents related to data processing activities involving AI and will maintain All AI-generated conten complete and accurate records of such consents.

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Vendors and Subconsultant Al Usage Questionnaires

"Are you using AI to deliver services to us?" If the answer is yes, include indemnity and insurance requirements.

Intellectual Property Indemnification. Supplier shall indemnify, defend and hold Buyer and Buyer's customers harmless from any and all claims against Buyer and/or Buyer's customers alleging intellectual property infringement of any patent, copyright, trademark, trade secret or other intellectual property rights of any third party arising out of the use, sale, importation, distribution, reproduction or licensing of any product, service, article or apparatus, or any part thereof constituting goods or services furnished under this Order, as well as any device or process necessarily resulting from the use thereof (the "Indemnified IP"), including the use, sale, importation, distribution, reproduction or licensing of such Indemnified IP, in foreseeable combinations with products or services not supplied by Supplier. Buyer shall notify Supplier promptly of any such suit, claim or proceeding and give Supplier authority and information and assistance (at Supplier's expense) for the defense of same, and Supplier shall pay all damages, costs and expenses incurred or awarded therein, including reasonable attorneys' fees. Notwithstanding the foregoing, any settlement of such suit, claim or proceeding shall be subject to Buyer's consent, such consent not to be unreasonably withheld. If use of any Indemnified IP is enjoined, Supplier shall, at Buyer's option and Supplier's expense, either: (a) procure for Buyer the right to continue using such Indemnified IP; (b) replace the same with a non-infringing equivalent; or (c) remove the Indemnified IP and/or halt such use of the Indemnified IP in providing goods and/or services under this Order and refund the purchase price to Buyer, and in all cases, Supplier shall be responsible for all related costs and expenses. Supplier agrees that it shall use commercially reasonable efforts to obtain an intellectual property infringement indemnity from its direct or indirect suppliers providing goods and/or services as part of the deliverables under this Order consistent with the intellectual property infringement indemnity it provides to Buyer in this Order.













When do professional services morph into selling software products?

How deliberate are design firms at keeping clear separation between professional services and the sale of a product?

How diligent are we in securing coverage for Technology Based Services & Technology Products in PL policies?

Professional Services
w or w/o
Technology Based
Services

Technology Based Services

Technology Products
/ Software





Are Tech E&O policies part of the answer?

Tech E&O policies provide coverage for companies selling technology products or offering consulting services related to information technology, *cf.* technology developed as a part of prof. services

Coverage is intended to cover:

Acts, errors or omissions in the performance of technology services

Defects, Deficiencies or inadequacies in a technology product

Failures in performance of tech products or services in accordance with a contract

Tech E&O policies are not a substitute for a Professional Liability policy. Rather, Tech E&O policies complement a PL policy.





Possible Exposure Re Al Usage

| I. | IP Infringement ☐ Whose IP was used to train the AI system utilized? It will be very rare for firms to own proprietary AI systems. |
|------|--|
| II. | Corporate decision-making influenced by AI products. □ IP claims □ breach of fiduciary duties □ Shareholder derivative claims |
| III. | Employment Practices impacted by Al-driven decision-making Hiring decisions Promotion decisions Performance evaluations Wrongful termination claims Discrimination claims Harassment claims |
| IV. | Media exposures impacted by Al driven marketing & communications Content creation Defamation Invasion of privacy IP infringement |

Potential Insurance Coverage

| I. | Intellectual Property Insurance ☐ Many PL policies contain exclusions for claims arising from IP infringement ☐ Some insurers are creating AI Endorsements to Cyber policies |
|------|---|
| II. | D&O Insurance ☐ Consider whether limits are adequate. |
| III. | Employment Practices Liability Insurance (EPLI) EPLI can help protect businesses from potential algorithmic bias-related lawsuits. |
| IV. | Media Liability Insurance |

☐ For businesses that use AI to generate and curate content, coverage can protect against claims of defamation, invasion of privacy and IP infringement





Use of AI by Insurers: Property Insurance

Underwriters Deploying Al Analysis and Modeling Systems

Geographical information

Weather patterns

Property characteristics

Simulating projected CAT losses at insured's locations

The construct predicts premium to adequately fund for flood, earthquake, windstorm, etc. within a few seconds.

Faster, more efficient underwriting with more accurate assessments

Use of AI in Property Valuation

Satellite and drone data provide more accurate property valuation





Use of AI by Insurers: Property Insurance

Claims

Automated claim verification

Fraud detection

Damage assessment

Image recognition algorithms analyze photos of damage to provide immediate estimates for repairs

Prevention

Al is utilized for preventative measures

Smart sensors in homes to warn policy holders about potential hazards (fire, flooding, etc.)

Monitoring weather forecasts





Use of AI by Insurers: Cyber Insurance

Al being deployed by Cyber carriers during vulnerability probes of insureds' websites

Not relying on AI technology for underwriting just yet

Bad Al Trend: More elaborate phishing schemes

After infiltration, bad actors utilize AI to follow users and scan their emails to mimic their tone, style, (bad) punctuation and spelling, idiosyncrasies, etc., to generate convincing dupes

Deep fakes: Actual audios and videos

Arup Hong Kong office duped into wiring \$25M USD to Bad Actors







- Al is not Cybersecurity
- Unclear how AI will cause losses under a Cyber policy
- Are AI Exclusions in Cyber policies on the horizon?

https://www.insurancebusinessmag.com/us/news/cyber/brokers-must-ask-hard-questions-about-ai-coverage

February 3, 2025

- Endorsement to Cyber policy
- Coverage protects businesses that develop their own Generative AI
- Data-poisoning, copyright issues, regulatory violations





https://www.insurancebusinessmag.com/us/news/technology/specialized-ai-insurance-needed-as-adoption-accelerates

January 29, 2025



Use of AI by Insurers: Underwriting

Clear potential for AI to assist underwriters

Al not yet being deployed by key U.S. Professional Liability and Property & Casualty markets (outside of Property)

Underwriters see the opportunity for AI to assist on the submission intake side by plugging information from renewal applications into their rating system automatically

Services

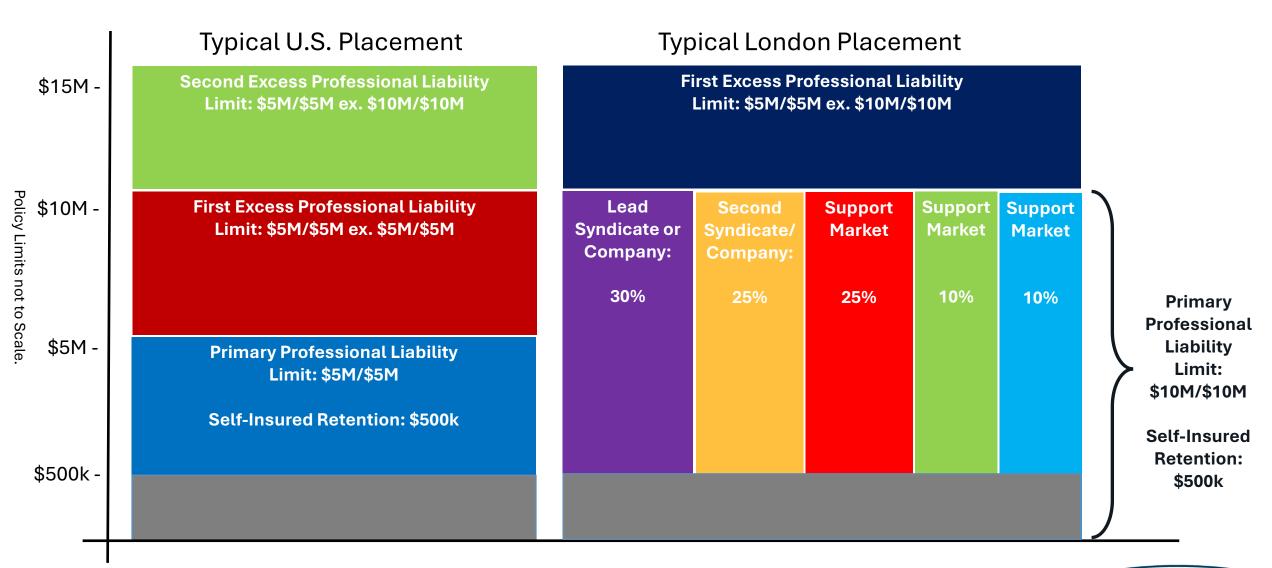
Project types

Project sizes

Travelers has an internal Chat Box which summarizes endorsement forms and coverages for underwriters

Lloyd's of London Placements and Al





The Algorithmic Lloyd's Syndicate: Ki Insurance



Ki is a Lloyd's of London Syndicate based on algorithms following specified lead markets

Founded in September 2020

Initially funded with \$500M USD from Blackstone Tactical Opportunities and Fairfax HC

Largest Insurtech startup ever

Capacity Partners: Aspen, Beazley, KI 1618, Travelers, QBE

\$400M USD Gross Written Premium (GWP) in Year One; doubled in Year Two; \$877M USD GWP in 2023

"Underwriting risk in less than 10 seconds" (ki-insurance.com/news/future-of-ai-in-underwriting)

Quoting in seconds, saving you days.

We designed the Ki platform for brokers. Here's how we've changed the quote process to cut back the admin and cut out wait time.

In seconds, using Ki.

Instant lines every time
Quotes in an instant, 24/7.

An instant line

Ki delivers the fastest way to get a quote in Lloyd's. Access it anywhere, at any time.





Use of AI by Insurers: Claims

Rising claims costs have affected the entire insurance industry and almost every line of coverage

Insurers are now utilizing AI to streamline parts of the claim process and are beginning to see the benefits of AI in the claims management process

Insurers and Third-Party Claim Administrators (TPAs) are creating their own AI systems to ensure confidentiality of claim information, which is a huge concern

Alleviates time-consuming administrative tasks, allowing examiners to focus on claimant engagement, improving the experience and delivering faster resolutions with better outcomes

This will have an immediate impact on auto, general liability and workers' comp claims

Not yet being utilized on Professional Liability claims based on our discussions with the markets





Use of AI by Insurers: Claims

Assist with the claim intake process to set up claims and assign an adjustor faster

Assist adjustors in absorbing and acting on relevant data more efficiently - A single claim can stretch to hundreds of pages

Takes large amounts of information and quickly generates uniform, standard, documentation summaries

Big potential for improved efficiencies in Workers Compensation claims:

Over 120,000 classification codes and procedure terminology which drive various medical and claim-related decisions

Claims get updated with new medical and work-related information every day which can result in big changes in potential loss

Constantly monitors claim activity and identifies more actionable opportunities to enable earlier clinical intervention / solutions and provide adjustors with complete and ingestible data to strategize on the most effective plan for medical recovery and return to work



Use of AI by Insurers: A&E Professional Liability

The possibilities for improved risk management are vast

Lessons Learned

Industry Threats and Claims Trends

Evolution of Contractor Claims and Attack Vectors

Analysis of Successful Defense Strategies

Contractual Adaptation Based on Claims





Use of AI by Insurers: Actuaries

EPIC's actuary team has built an AI chat box where 20,000 pages worth of claim notes for one client have been uploaded and reviewed by AI (with consent)

Enables the actuary team to ask the chat box specific questions related to claims - Example: "Do I have any claims related to neck injuries?"

Still unable to provide output for aggregate of claims and trend information which is the next step in the development – Example: "How many injuries are over \$500,000? Which state or office location is experiencing the most claims?"

Goal is to help identify claim trends and work with brokers to provide tailored risk management to clients

Still in developmental stages





Al and the Engineer's Insurance

"That's terrific, Rog, and we always love seeing you here in Sandestin, but will this make our insurance more affordable?"

Not likely – at least not right away. Based on feedback we are getting from insurers in anticipation of this exact question, it is clear that insurance companies expect to enjoy increased efficiency in underwriting, claims-management, etc. However, insurers do not expect that these efficiencies will be passed along to insureds in the form of lower premiums. If this were come to pass, it would be based on economies of scale built up over years.









Q&A

Thank You For Having Me

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Group Captive Insurance

An Innovative Insurance Solution For Eligible ACEC Member Firms

https://vimeo.com/1103552130