ZELLE LLP

LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown | Friday, February 27, 2026 | ISSUE 34

Welcome to The Zelle Lonestar Lowdown, our monthly newsletter bringing you relevant and up-to-date news concerning Texas first-party property insurance law.

In 2025, we focused on Collaboration. We had people reach out with article ideas, their own articles, and ideas for industry events. In 2026, we will continue that effort. We continue to invite our readers to let us know what they are worried about, legal topics that pique their interest, and new advances in the industry – all with a Texas twang.

We are also excited to announce that Zelle is issuing a quarterly newsletter addressing law in the Midwest called the "Midwest Monitor: Heartland Insurance Review." The first edition may be found here.

As always, if you are interested in more information on any of the topics below, please reach out to the author directly. Zelle attorneys are always interested in talking about the issues arising in our industry. If there are any topics or issues you would like to see in the Lonestar Lowdown moving forward, please reach out to our editors: Shannon O'Malley, Todd Tippett, and Steve Badger.

INSIDE THIS ISSUE

Upcoming Events

You don't want to miss this!

March 5 – Jennifer Gibbs will present "Shifting Sands: Tackling Attribution Disputes and the Kane Ruling in Cyber Coverage" with co-presenters Natalie DuBose (Haynes and Boone LLP), Breanna Jones (Covington & Burling LLP), and Peter Rosen (JAMS) at the ABA 2026 Insurance Coverage Litigation Committee CLE Seminar in Tucson, AZ.

March 5 – Zelle's New York office is hosting the ARIA US Future Leaders Committee Seminar featuring a panel presentation on the Lloyd's Reinsurance Market. Peter Golfman will be joined by co-panelists Joshua Abrams, Moderator (Arch Insurance), Suzie Sumsion (Aon), and Nicola Partheniou (Aon).

March 6 – Jonathan MacBride will participate in a panel discussion “Are Bad Faith and Coverage Experts Admissible at Trial?” at the ABA 2026 Insurance Coverage Litigation Committee CLE Seminar in Tucson, AZ. Panelists include moderator Jay M. Levin, (Flaster Greenberg PC), Hon. Pamela Carlos, (U.S. District Court for the Eastern District of Pennsylvania), Heidi Hudson Raschke (Carlton Fields LLP), and Jennifer C. Wasson (Potter Anderson & Corroon LLP).

March 10 – Steven Badger will present “Hot Topics in Texas Property Claims” at the Texas Association of Public Insurance Adjusters - TAPIA Spring Conference in Frisco, TX.

March 11 – Steven Badger will participate in the Appraiser/Umpire Training Course at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in New Orleans, LA.

March 12 – Steven Badger will present “Herding the Helpers: Coordination Among Third Parties in the Claims Process” at the DRI 2026 Insurance Coverage and Claims Institute in Chicago, IL.

March 22 - 23 – Brandt Johnson**,** Lindsey Davis**,** Seth Jackson**,** Dennis Anderson**,** and Jessica Port will present at the 2026 PLRB Claims Conference & Insurance Services Expo in National Harbor, MD.

April 6 – Steven Badger will present “CAT Claim Fraud – What The Hail Is Going On?” at the Pennsylvania Association of Mutual Insurance Companies (PAMIC) 2026 Claims Summit in Lancaster, PA.

April 14 – Steven Badger will present “Make Appraisals Great Again” at the National Association of Mutual Insurance Companies (NAMIC) Claims Conference in Orlando, FL.

April 15 - Kristin Suga Heres and Kyle Espinola will present at the Massachusetts Insurance and Reinsurance Bar Association (MIReBA) 2026 Annual Symposium in Boston, MA.

April 19 – Steven Badger will participate in “The Great Merlin/Badger Debate” at the GenRe Claims Conference in Savannah, GA.

April 23 – Steven Badger will present “The Insurance Company Perspective” at the Merlin Public Adjuster Training in Tampa, FL.

May 27 – Steven Badger will present “Hot Topics and Emerging Trends in Weather Related Claims – 2026 Update” as part of the NAMIC Claims Webinar Series.

June 9-10 - Jessica Port will present "The Ethics of Automation: Avoiding Bad Faith Claims in AI-Driven Claims Handling” at the PLRB 2026 Eastern Regional Adjusters Conference in Hartford, CT with co-presenters Gene Strother (AdjustU) and Robin Roberson (Agentech).

June 17 – Jason Reeves and Hernán Cipriotti will present “Bodily Injury Climate Change Claims” at the 2026 IRMI Energy Risk and Insurance Conference (ERIC), taking place June 15 – 17, 2026 in San Antonio, TX

1. The test for concurrent causation in Texas is if noncovered and covered causes of loss combine to cause claimed damage and the two causes cannot be separated, then there is concurrent causation and the excluded cause of loss is triggered such that the insurer has no duty to provide coverage.

2. Tile roofs with broken tiles can be spot repaired with replacement tiles. There are at least two manufacturers that can match and make replacement tiles – any size, shape or color.

News from the Trenches

by Steven Badger

I am often asked: “Badger, what do you think of public adjusters?”

Like any profession, there are some good public adjusters and there are some bad public adjusters. And, sadly, the bad public adjusters are REALLY bad. Some rip off their clients. Some rip off insurance companies. And this is to be expected in a profession where there is virtually no barrier to entry. Anyone can easily get a public adjuster license. With such a low barrier to entry into the profession, the number of REALLY bad public adjusters is increasing. That has become obvious to me over the past few years.

But despite these concerns, I absolutely support the role of the professional public adjuster in the claims process. I am always careful never to criticize the public adjusting profession as a whole -- just the bad actor public adjusters. A reputable and professional public adjuster can assist an insured in bringing a claim to a prompt and fair conclusion. I know those reputable and professional public adjusters exist. Because I have met them and their claims never cross my desk.

It is for the sake of these reputable and professional public adjusters who are true policyholder advocates that I am opposed to any effort to restrict the use of public adjusters in the claims process. I previously publicly opposed the use of “anti-public adjuster” endorsements in insurance policies. Some insurance companies were not happy with my taking this position, but in my opinion it was the correct position to take on the issue.

3. A bona fide disagreement between retained claims-handling experts should prevent insurers from bad faith liability in Texas. Retention of a qualified expert who will give you unbiased conclusions to ensure that a good faith disagreement is what led to property claims litigation is important.

4. Courts are increasingly scrutinizing the use of automated hail reports and internet weather data; thus the industry should consider retaining a qualified forensic meteorologist to provide site-specific/science-based hail information for claims.

5. When evaluating an estimate of damage presented by an insured or its representatives, pay close attention to unnecessary/duplicative line items in the General Conditions.

6. SPF roofing should normally be expected to remain dry for the purpose of being repairable (through scarification and re-foaming) without a need for complete removal and replacement.

7. HVAC repairs remain legal and feasible. Such repairs can even be made to older systems that will continue to operate effectively with proper maintenance.

8. Disruption from hail to the galvanized coating on a metal roof is not functional damage.

9. The insurance industry needs to continue working with the appropriate regulators to develop designs and specifications for hail resistant roofs, just like they have for wind.

10. There is an increased concern in the industry related to fraudulent "man-made" wind and hail damage. Look for irregularities and retain an expert if you believe fraud exists.

Feel free to contact **Todd M. Tippett** at 214-749-4261 or ttippett@zellelaw.com if you would like to discuss these Tips in more detail.

There is now another significant attack on the public adjusting profession. Recently introduced legislation in Kentucky would effectively bring an end to the public adjusting profession in that state. The proposed legislation prevents the issuance of any new licenses, precludes public adjusters from negotiating with insurance companies, and caps their commissions at 5%. All a public adjuster could do under this legislation is act as a private consultant to the insured. That's it.

In my opinion, this is bad legislation. It will simply drive more insureds to attorneys, who will charge the insured 40% instead of the typical public adjuster commission of 10%. Lawsuits will increase. That's not good for anyone.

A copy of the legislation is available here.

Now let's also be clear – I have my concerns with the public adjusting profession. And I make those concerns well known. Because of these concerns, the time has come for the reputable public adjusters and their trade associations to raise the bar in their profession. I have sung this song for several years now. But I've seen nothing in response. Attacks on the public adjusting profession will continue if the undeniable problems in the profession are not addressed. If the Kentucky legislation passes, other states will surely follow.

I have offered to help draft legislation raising the bar to become a public adjuster and address many of the abuses that are causing the ongoing attacks on the profession. But I can't do it alone.

The public adjusting profession needs to step-up and save itself from itself.

AI Update

Listen All of Y'all It's a Sabotage - What Is Claude 4.6, and Should We Be Concerned?

by Jennifer Gibbs

The latest release of Anthropic's enterprise-grade generative AI - Claude 4.6 – is the newest iteration of the Claude model family that promises improved reasoning, reduced hallucination rates, stronger tool-use capabilities, and more reliable long-context performance. However, accompanying the release came discussion of a "Sabotage Risk" evaluation report. This report is designed to test the model's potential misuse in high-stakes environments.

One of the most concerning findings for researchers was Claude Opus 4.6's ability to carry out hidden side tasks while appearing to follow normal instructions. Specifically, in targeted tests, the model proved "significantly stronger than prior models at subtly completing suspicious side tasks in the course of normal workflows without attracting attention," a capability Anthropic described internally as "sneaky sabotage". The company also acknowledged instances during internal pilot deployments where the model took unauthorized actions, including sending emails, as part of attempts to complete assigned tasks.

Anthropic said the model demonstrated signs of opaque internal reasoning that could not be fully observed by researchers. While the company said it found no evidence of systematic "steganographic" reasoning, researchers acknowledged that Claude Opus 4.6 can perform some computation outside its visible reasoning traces. Steganography is the art and science of concealing messages or data within other, non-secret files (images, audio, video) to avoid detection. This means parts of its decision-making can occur in ways that

human evaluators cannot directly observe. Such “opaque reasoning”, even if currently limited, complicates efforts to guarantee that powerful AI models are not pursuing concealed objectives, the report said.

Anthropic concluded that Claude Opus 4.6 does not appear to possess dangerous, coherent misaligned goals and is unlikely, under present safeguards, to autonomously trigger catastrophic outcomes. **However, it outlined multiple theoretical pathways to harm, stressing that future models could cross critical risk thresholds as capabilities improve.**

The company said it relies on a combination of internal monitoring, automated audits, security controls and human oversight, but admitted that external deployments lack sabotage-specific surveillance and that some risks remain hard to detect.

With developers of generative AI resigning over ethical and safety concerns, the message is clear: frontier AI capabilities are accelerating, and so must the guardrails to balance concerns of safety versus speed and avoid potentially cataclysmic failures.

Insurance Experts Need to Recognize the Importance of Causation When Issuing Reports

by Shannon O'Malley

If you attended our recent 2026 *What the Hail?* conference, you may have seen me discuss Texas concurrent causation and its real-world implications. The presentation addressed what the insurer and its consultants should consider when analyzing damage caused both by covered and non-covered causes of loss. This week, another Federal Court in Texas looked to concurrent causation and analyzed the reliability of an insured’s expert in segregating covered from non-covered (here pre-existing) damage.

In *Nguyen v. Allstate Vehicle and Prop. Ins. Co.*, No. 2:24-CV-186-Z-BR, 2026 WL 497400, at *1 (N.D. Tex. Feb. 23, 2026), the court analyzed whether an insured and his experts met their burden to show that non-cosmetic damage occurred on May 1, 2022, the specified date of loss.

The policy here included a robust cosmetic damage endorsement, which stated:

> Cosmetic damage caused by hail to the surface of a metal roof, including but not limited to, indentations, dents, distortions, scratches, or marks, that change the appearance of the surface of a metal roof.
>
> This exclusion applies to all of the components of the surface of a metal roof, including but not limited to, panels, shingles, flashing, caps, vents, drip edges, finials, eave and gable trim and snow guards, coatings and other finishing materials.
>
> We will not apply this exclusion to sudden and accidental direct physical damage to the surface of a metal roof caused by hail that results in water leaking through the surface of a metal roof.

The insurer argued that the exclusion precluded coverage for cosmetic damage caused by hail to the surface of the roof unless it results in water leaking through the roof surface. The insurer determined that there was hail damage but concluded the only “damage” was to the appearance of the roof and no water leaked due to the hail.

The insured disagreed and eventually brought suit arguing that because water was leaking into his garage, the roof was damaged and required replacement. The parties litigated and exchanged expert reports.

Notably, the insured’s expert report did not specifically connect the alleged damage to the claimed date of loss – or even any other storm that occurred during the policy period. Instead, the expert report only noted that there were clear signs of a previous severe hailstorm and there were multiple areas of impact damage. The court noted that the report included a weather report that showed a hailstorm occurred near the property on the claimed date of loss. But that same report also showed eleven other hailstorms that impacted the property in the years *before* the policy’s coverage period. The report also failed to consider and rule out other possible

causes including wear and tear, deterioration, and faulty workmanship. Finally, the insured's expert report did not present any information about the condition of the roof before the claimed date of loss.

The insured conceded the missing information in the report but argued that the insurer had already confirmed that May 1, 2022 was the operative date of loss. The court rejected that argument, though, noting that it was the *insured* who reported the date of loss and it is the *insured's burden* to establish that the May 1, 2022 storm actually *caused* the damage that resulted in the leak in the insured's roof:

> Stated differently, because the Cosmetic Damage Endorsement in Plaintiff's policy excludes coverage for merely superficial damages, the jury in this case would be asked to decide the cause of any non-cosmetic damage to Plaintiff's roof. Because Rhynhart's report does not tie any non-cosmetic damage he observed to the May 1 storm, and in fact fails to date any damages at all, it would not aid the jury in that task. Accordingly, his opinions about whether the May 1 storm damaged Plaintiff's roof must be excluded.

Id. at *4.

Because the court excluded the insured's expert opinion "that the May 1, 2022 storm caused damage to Plaintiff's roof or other parts of Plaintiff's property," the court determined that the insured could not meet its burden to show its claim was covered and granted summary judgment.

The insured attempted to avoid summary judgment by arguing that the insurer's experts identified deterioration and faulty installation of the flashing as the causes of the leaking. Specifically, because the insurer presented at least two different explanations for the cause of the water intrusion, it cannot meet its burden to show the Cosmetic Damage Endorsement applies. But the court rejected this argument, too, holding that it "is not incumbent upon Allstate to prove that a single cause other than the May 1 storm is the reason for the leak in the Plaintiff's garage. Rather, to trigger application of the Endorsement, Allstate must show only that the May 1 storm was *not* the cause of the leak, even if Plaintiffs roof bears signs of hail-related cosmetic damage." *Id.* at *7.

The court rejected the insured's attempt to create a further fact issue by testifying that the roof began leaking after the storm because the insured was not qualified as an expert to opine on causation. And because the insured's causation expert opinion was excluded, he could not provide competent evidence that a covered cause of loss (hail damage) caused the water leaking due to the storm occurring during the policy period. Accordingly, the court granted summary judgment on the breach of contract claim. And because there was no coverage under the policy, the court also granted summary judgment on the remaining bad faith and extra contractual claims.

The Lowdown: This case demonstrates that courts, at least at the Federal level, recognize the importance requiring the insured to meet his burden to establish causation in determining whether an exception may apply to an exclusion. Broad statements unsupported by real data or testimony attempting to tie damage to an amorphous event do not meet the insured's burden to show *covered* damage occurred during the policy period.

Further, this is one of the first cases to address a more robust cosmetic damage endorsement that does *not* tie coverage to "functional damage" or reduced life. Instead, the exclusion limits coverage to when the hail immediately allows the intrusion of water. Insurers concerned about hail dents and dings to metal roofs may want to consider adopting this more robust cosmetic damage language moving forward.

Past Storms During Prior Policy Periods Is Not Enough: Fifth Circuit Affirms Summary Judgment Absent Proof of Hail Within the Alleged Policy Period

by Kiri Deonarine

Let's say a carrier insures a property for a number of years. During that time, multiple events occur that could damage the property. The insured waits, however, to make a claim. A claim is eventually made but it is not clear the event occurred during the policy period claimed. In *H5R, L.L.C. v. Scottsdale Insurance Co.*, No. 25-10533, 2026 WL 252653, at *1 (5th Cir. Jan. 30, 2026), the Fifth Circuit determined that if the insured does not present evidence that an event occurred during the policy period alleged in the complaint, then the carrier is entitled to summary judgment.

In *H5R*, the insured owned the property at issue since 2016, and Scottsdale insured the risk from 2018 through 2021 through annual renewal policies. When the parties disagreed on coverage and suit was filed, the insured's complaint referenced only the policy period beginning in December 2020. That policy covered "direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss." "Covered Causes of Loss" included:

> 4. Windstorm or Hail, but not including
> a. Frost or cold weather;
> b. Ice (other than hail), snow or sleet, whether driven by wind or not;
> c. Loss or damage to the interior to any building or structure . . . caused by rain, snow, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the

rain, snow, sand or dust enters, or;
d. Loss or damage by hail to lawns, trees, shrubs or plants which are part of a vegetated roof.

The policy also excluded "[r]upture or bursting of water pipes . . . unless caused by a Covered Cause of Loss" and "[l]leakage or discharge of water or steam from any part of a system or appliance containing water or steam . . . unless the leakage or discharge occurs because the system or appliance was damaged by a Covered Cause of Loss." The policy covered only loss "commencing . . . [d]uring the policy period."

In April 2021, the insured submitted a claim to Scottsdale for "[s]now and ice caus[ing] water to leak from roof, wall, floor through property, pipe burst underneath kitchen sink" that allegedly occurred on February 15, 2021. Scottsdale investigated the loss and found hail damage to the roof tiles occurred before February 2021. Ultimately, Scottsdale denied the claim.

The insured disagreed with Scottsdale's coverage position and filed a lawsuit claiming breach of contract, bad faith, late payment and deceptive insurance practices pursuant to Chapters 541 and 542 of the Texas Insurance Code.

Scottsdale's expert concluded that the holes in the property's roof were most consistent with hail impacts that occurred in 2011. Scottsdale's expert relied on a hail report showing that hail fell at the location in May 2011, April 2012, and March 2019 – all before the December 2020 policy period.

The insured objected to Scottsdale's expert and argued that its own witness should have been admitted for expert testimony regarding hail damage. The Fifth Circuit rejected both arguments. The court held that any alleged error regarding Scottsdale's expert was harmless because the insured failed to show prejudice. The court also affirmed the exclusion of the insured's witness, who had not been designated as an expert witness regarding whether or when hail damage occurred and testified that the hail damage at the property could have occurred in 2011.

The insured further argued that because it renewed its policy from 2018 to 2021, the policy period to be considered in the lawsuit should encompass all those years. The Fifth Circuit disagreed, explaining that each renewal policy is a separate and distinct contract. Because the complaint referenced only the December 2020 policy—and the insured did not amend to assert breaches of earlier policies—the court confined its analysis to that policy period.

Critically, the insured presented no evidence that hail occurred during the December 2020-2021 policy period. Without such evidence, there was no genuine dispute of material fact as to whether covered damage occurred. The court therefore affirmed the district court's grant of summary judgment to Scottsdale. Furthermore, because the remaining claims were predicated on the success of the breach of contract claim, those claims failed as well.

H5R highlights the importance of focusing on the policy period actually alleged in the complaint and is a good reminder that renewal history alone does not expand the coverage period at issue.

Texas Supreme Court Holds that Tornadoes are Considered Windstorms When "Windstorm" is Undefined in a Homeowners Policy

by Katherine Jakeway

On February 13th, the Texas Supreme Court issued an opinion in *Privilege Underwriters Reciprocal Exch. v. Jeff Mankoff and Staci Mankoff*, holding that the term "windstorm," when undefined in a homeowners insurance policy is not ambiguous, and that its ordinary meaning encompasses a tornado.

This case centered around a 2019 tornado that damaged the Mankoff home, which was covered by a homeowners policy issued by Privilege Underwriters Reciprocal Exchange ("PURE"). The Mankoffs submitted a claim under the policy and were paid only a portion of their claim because of the high deductible. PURE asserted that because a tornado qualifies as a windstorm, the claim was subject to the policy's "Windstorm or Hail Deductible," which was significantly higher than the policy's general deductible. The Mankoffs then sued for breach of contract, alleging that a tornado is a peril separate and distinct from a "windstorm", an undefined term in the policy.

At the trial court level, the parties filed cross motions for summary judgment with their respective wind arguments. The trial court granted PURE's summary judgment motion, denied the Mankoffs' motion, and rendered a take-nothing judgment against the Mankoffs. But on appeal, the Dallas Court of Appeals reversed and rendered judgment for the Mankoffs. That court concluded that the deductible at issue was ambiguous because the term "windstorm" was undefined and subject to more than one reasonable meaning.

Spotlight

Thank you to everyone who joined us for the 2026 *What the Hail?* Conference. The engagement, conversations, and shared insights continue to make this event special year after year.

We are deeply grateful to our sponsors and partners for making the conference, and favorite traditions like the What the 80s party, possible.

Therefore, the court rejected PURE's argument that the plain meaning of "windstorm" includes a tornado.

To clarify these issues, the Texas Supreme Court first examined whether the term "windstorm" was ambiguous. To ascertain the term's plain meaning, the Court first looked to dictionary definitions, and then to the term's usage in statutes, case law, and other authorities. After considering the Merriam-Webster and Webster's New World College Dictionary definitions, the Court found:

> The common thread running through dictionary definitions of "windstorm" is a storm with violent, strong winds but little or no precipitation. *See City of Fort Worth v. Pridgen*, 653 S.W.3d 176, 184 (Tex. 2022). A tornado falls within these definitional boundaries. Dictionaries consistently define a "tornado" as a violent and destructive movement of wind.

Therefore, the Court determined that a "tornado is a windstorm in and of itself, and this is true regardless of whether it is a subset of a broader storm involving precipitation."

Moreover, the Court found that the use of the term "windstorm" in statutes and case law do not call the dictionary definitions into question. First, the terms "windstorm" or "tornado" are undefined in the Texas Insurance Code and Texas Property Code and were not considered instructive on the determination of the ordinary meaning of "windstorm." Moreover, the Court found that Texas case law was no more instructive to the meaning of "windstorm," as "no Texas court has determined the ordinary meaning of "windstorm" as a matter of law." The Court determined that none of the authorities cited by the Mankoffs indicated that a tornado is somehow not a windstorm in and of itself. Rather, the Court concluded that "not all windstorms contain tornadoes, but all tornadoes are windstorms, regardless of whether the broader weather event includes precipitation."

Given this reasoning, the Texas Supreme Court found that the "Windstorm or Hail" deductible applied to the Mankoffs' claim, as the deductible unambiguously applies to damage caused by a tornado. Therefore, the Court unanimously reversed the Dallas Court of Appeals judgment and reinstated the trial court's summary judgment for PURE.

A special thank-you to our attendees and sponsors who supported Project Backpack, helping provide school supplies to more than 300 Dallas ISD students.

We appreciate your support and look forward to seeing you again in 2028.

BEYOND THE BLUEBONNETS

AI Tools and Bad Faith Risk in Insurance Claim Handling: Lessons from *Lokken*

by Laura Bartlow (Minneapolis Office)

Artificial intelligence (AI) is increasingly used in claims handling through predictive analytics, automation, fraud detection, and cost estimation. While these tools provide speed, consistency, and accuracy, they also raise litigation risks—plaintiffs may challenge both outcomes and the AI-driven process. A 2025 case, *Estate of Lokken v. UnitedHealth Group, Inc.*, 766 F. Supp. 3d 835 (D. Minn. 2025), illustrates how plaintiffs may plead that AI replaced individualized judgment and how courts may treat those allegations. The main takeaway: replacing human judgment with AI may increase exposure to allegations of bad faith and invasive discovery into insurer claims handling processes.

Lokken v. UnitedHealth Group, Inc.

In *Lokken*, the plaintiffs were insured under Medicare Advantage plans sold or administered by UnitedHealth entities. The policyholders sought coverage for post-acute care, were denied, and alleged that the denials caused serious harm, including worsening injuries and, in some instances, death. The factual centerpiece was the allegation that an AI tool—"nH Predict"—effectively substituted physicians' judgment by applying "rigid criteria," generating estimates based on comparisons to "similar" patients, and driving denials even when treating providers recommended additional care. The plaintiffs also alleged that the tool was inaccurate and pointed to high reversal rates on appeal, and that the appeals process was frustrated through repeated denial letters or late payments that allegedly avoided exhaustion of administrative remedies.

The *Lokken* court dismissed most state-law and statutory claims by applying the Medicare Act preemption. Critically, however, two claims survived: breach of contract and breach of the implied covenant of good faith and fair dealing. The court allowed those claims to proceed because they could be resolved without imposing state-law standards that regulate Medicare's benefits framework.

Where AI Risk Shows Up

Lokken did not tackle the substance of the plaintiffs' bad faith premised on the use of an AI tool, and its Medicare context includes doctrines—like preemption—that do not map neatly in the property and liability insurance context. But it does show how courts and litigants are approaching AI in claims-adjacent decisions: by applying traditional legal concepts to modern tools and focusing on whether automation replaced individualized judgment.

In *Lokken*, the plaintiffs framed AI as replacing individualized professional judgment. Similar allegations of overreliance or rubber-stamping can arise in other types of claims when AI tools are used to set scope and pricing, flag coverage issues, recommend causation conclusions, or drive SIU referrals. The more an adjuster's role looks like confirming an AI recommendation, the more a plaintiff may argue the carrier failed to conduct a reasonable, claim-specific evaluation.

Another risk is explainability, which quickly becomes a discoverability problem. If AI materially influenced a claim decision, counsel should expect discovery demands aimed at model configuration, thresholds, training data sources, vendor communications, override rates, and internal guidance on how staff should use the output. Weak governance can fuel arguments that the investigation was unreasonable—even if the carrier ultimately prevails on coverage.

Data quality and bias are also risks. If an AI tool is trained on historical data embedded with past adjusting practices or relies on unsuitable "similarity" comparisons, it may introduce systematic estimate errors. From a litigation standpoint, pattern-based inconsistencies can become the narrative, even when any single claim decision appears defensible.

Finally, *Lokken* highlights risks arising from operational incentives and control failures. Productivity metrics and workflow performance standards are not inherently problematic, but if they functionally penalize adjusters for deviating from AI outputs or taking time to investigate exceptions, they can be recast in litigation as institutional pressure favoring speed and cost containment over accuracy.

Bad faith allegations against property and liability insurers can be driven by inadequate investigation, ignoring relevant information, unreasonable delay, or outcome-driven claims handling. AI tools can heighten these risks by providing clear decision-making mechanisms for plaintiffs to challenge. The *Lokken* case highlights that plaintiffs can plead AI use as evidence of systemic unreasonableness and bad-faith claims may survive on allegations that claim-handling processes are dominated by automated outputs despite promises of individualized expert or professional review.

What Is an Insurer To Do?

The defense posture is familiar: the file should demonstrate the facts gathered, the policy language applied, what the AI tool contributed, whether the output was tested against claim-specific evidence, and why the final decision is reasonable. Adjusters should document their reasoning and any reliance on or deviation from AI recommendations to ensure transparency for neutral reviewers.

For claims professionals, the most durable takeaway is that AI will be evaluated as part of the claim-handling process and will be discoverable like other decision inputs. As AI capabilities develop and legal standards evolve unevenly across jurisdictions, today's AI-driven workflows will be examined in litigation through the familiar lens of reasonable investigation, policy-based decision-making, and good-faith conduct.

For more information on any of the topics covered in this issue, or for any questions in general, feel free to reach out to any of our attorneys. Visit our website for contact information for all Zelle attorneys at zellelaw.com/attorneys.

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