

The Legal Intelligencer

The Continued Rise of Generative AI Exclusions in Commercial Insurance Policies: What Policyholders Need to Know

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As the use of artificial intelligence becomes more woven into the fabric of everyday personal and commercial endeavors, the risks associated with that use have begun to surface. As with any risk, commercial policyholders will often look to insurance as a risk mitigation tool. As predicted, the U.S. insurance industry is rapidly introducing exclusions intended to limit or eliminate coverage for losses arising from the use of generative artificial intelligence. Commercial policyholders should understand the scope of these developments and take proactive measures to protect their interests.

AI-Related Civil Litigation

AI-related lawsuits are proliferating across multiple theories of liability, including copyright infringement claims involving print copying (*NY Times v. OpenAI*), music copying (litigations against Suno and Udio), image copying (litigation against Stability AI) and



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Anthony B. Crawford, with Olshan Frome Wolosky.

software copying (litigation against GitHub) arising from the training of large language models in those industries. There have also been several cases alleging bias or discrimination in hiring and insurance claims handling (*Huskey v. State Farm Fire & Casualty Company*; *Mobley v. Workday*; *EEOC v. iTutor Group*). With greater adoption of AI into daily business practices, there will likely be an increase in AI-related litigation across a wide swath of industries.

ISO General Liability Policy AI-Related Endorsements

Although the insurance industry traditionally moves with a more measured approach, there are times when the industry will move rapidly to address risks, such as its response to the COVID-19 pandemic. The risks associated with generative AI spark another rapid approach from the insurance industry. For example, effective Jan. 1, 2026, the Insurance Services Office (ISO) introduced three endorsements for commercial general liability (CGL) policies, each excluding claims “arising out of” generative artificial intelligence—defined as “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.” The endorsements differ in scope: CG 40 47 is the broadest, excluding both Coverage A (bodily injury and property damage) and Coverage B (personal and advertising injury); CG 40 48 is narrower, excluding only Coverage B (personal and advertising injury); and CG 35 08 applies exclusively to the products/completed operations liability coverage part, excluding bodily injury and property damage.

Because all three endorsements use the phrase “arising out of” which courts interpret broadly to require only a causal connection rather than direct causation, even claims with a tangential relationship to generative AI could fall within the scope of these exclusions. Notably, while not all carriers have adopted these exclusions, policyholders should be prepared to see these exclusions move more towards the industry standard.

AI Exclusions Are Also Being Introduced in Other Policy Types

AI exclusion language is not limited to CGL policies. Carriers such as W.R. Berkley (Berkley) have introduced purported “absolute” AI exclusions in directors & officers (D&O), errors & omissions (E&O), and fiduciary liability policies, barring coverage for claims “based upon, arising out of, or attributable to” any actual or alleged use, deployment, or development of artificial intelligence. Of note, Berkley’s definition is extraordinarily broad, encompassing “any machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs.”

The risks associated with generative AI use extend to the legal profession as well as other professions. Courts across the United States have sanctioned dozens of attorneys for submitting filings containing AI-generated fabricated case citations. E&O carriers are scrutinizing AI-assisted professional services, with some excluding or sub-limiting AI-related claims. The introduction of AI exclusions in professional liability policies is of particular concern to law firms and other professional service providers. For example, if a law firm’s malpractice policy contains such an exclusion, a suit alleging harm caused by the firm’s misuse of AI—such as submitting AI-hallucinated citations or relying on fabricated legal authorities—may not be covered. Even where there is no AI exclusion, insurance companies may argue that a professional who relies on unverified AI output without exercising any supervision or over-

sight never rendered a “professional service” within the terms of the policy.

The introduction of AI exclusions in professional liability policies is particularly troublesome because various industries are encouraging, if not outright requiring, increased use of AI in order to capitalize on the efficiencies that AI can bring. This could ultimately lead to the nullification of coverage for company’s use of everyday technology such as email programs. For example, if a crucial typo occurred in a suggested response generated by an email program’s AI component caused a loss, an overbroad AI exclusion could preclude coverage, where the fault would normally lie with human error in failing to proofread. Another area of concern is liability associated with vendors and customers. Policyholders should review their contracts with their customers and AI vendors for any gaps in indemnity that would expose them to increased risk.

Practical Takeaways for Policyholders

As always, risk mitigation involves a comprehensive strategy that includes sound corporate practices as well as insurance. Given the uncertainties regarding future insurance coverage for AI-related liabilities, companies should develop and implement sound AI use

policies. Policyholders will likely see more questions about their AI use in the insurance underwriting process. Commercial policyholders should review new and renewal policies carefully and work with brokers to negotiate narrower exclusion language or carve-backs.

Likewise, as is often the case with exclusions, policyholders can expect the insurance industry to develop AI-specific coverages. For example, in the cyber insurance space, some carriers have offered AI endorsements such as clarifying or expanding coverage for AI-driven attacks, including deepfake schemes.

Finally, policyholders should not assume that they do not have coverage under their existing policies for AI-related liabilities. Indeed, the introduction of new AI exclusions is a strong indicator that the insurance industry recognizes that insurance policies currently provide that coverage. Likewise, as with any exclusion, courts consistently construe exclusions narrowly and against the insurance companies. Policyholders should always consult with experienced coverage counsel to evaluate claims for available coverage.

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