



2024 Spring Conference

April 4-5, 2024

The American Club
419 Highland Dr.
Kohler, WI 53044

Program Chair:
Megan McKenzie
American Family Insurance Co.

*Program Agenda &
More Information
inside!*

**Approved for
6.0 CLE Credits.**



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2:00 – 2:50 PM

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Douglas Ross, Rural Mutual Insurance Company

11:00 – 11:50 AM

BELIEVE in Protecting Your Clients: Ted Lasso’s Tips for the Long Game Involving Minor Settlements

*Heather Nelson, Everson, Whitney, Everson & Brehm, S.C. and
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Schedule of Events

Thursday, April 4

12:30 PM
Registration

12:55 – 1:00 PM
Opening Remarks

1:00 – 1:50 PM
Snitches in our Pockets: Understanding Mobile Phone Evidence
Sean Lanterman, Esq., CCEP, Computer Forensic Services

1:50 – 2:00 PM
Break
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Bell, Moore & Richter, S.C.



2:00 – 2:50 PM
How to Use Employment Law to Win Your Torts Case
Nicole Marklein, Cross Jenks Mercer & Maffei, LLP

2:50 – 3:00 PM
Break
Sponsored by Cross Jenks Mercer & Maffei, LLP



3:00 – 3:50 PM
Navigating the Future: Exploring the Frontiers of Artificial Intelligence in the Legal Profession
William ("Bill") Salmonowicz, Cap Speciality Insurance Company

4:00 – 5:30 PM
Cocktail Reception / Panel Counsel Meetings
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 *Each attendee will receive two drink tickets. A cash bar will also be available.*

Friday, April 5

8:15 – 9:00 AM
Registration & Continental Breakfast

9:00 – 9:50 AM
Scaling the Reptile: How to Turn "Safety Issues" Into Your Friend
Michael Crooks, von Briesen & Roper, S.C.

9:50 – 10:00 AM
Break
Sponsored by
Simpson & Deardorff, S.C.



10:00 – 10:50 AM
Tales from a Reformed Ambulance Chaser
Douglas Ross, Rural Mutual Insurance Company

10:50 – 11:00 AM
Break
Sponsored by
Weiss Law Offices, S.C.



11:00 – 11:50 AM
BELIEVE in Protecting Your Clients: Ted Lasso's Tips for the Long Game Involving Minor Settlements
Heather Nelson, Everson, Whitney, Everson & Brehm, S.C. and Kristen Scheuerman, Weiss Law Offices, S.C.

11:50 AM
Adjourn



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Speaker Biographies

Mike Crooks is a Shareholder in the von Briesen and Roper, S.C.'s Litigation and Risk Management Practice Group. He focuses his practice on commercial litigation, legal malpractice and other professional negligence claims, accounting malpractice, insurance defense and coverage issues, bad faith litigation, product liability work, premises liability, breach of contract, personal injury defense and third-party recovery. Mike is also an experienced mediator and is frequently called upon to resolve disputes.



Mike is a frequent lecturer for many organizations including the State Bar of Wisconsin, the Wisconsin Judicial College, the Wisconsin Defense Counsel and the University of Wisconsin Law School.

Drawing on more than a decade of experience, **Sean Lanterman** focuses on complex matters involving electronic evidence, including civil and criminal litigation, as well as information security events for Computer Forensic Services. Sean is considered a trusted advisor by his clients, and has successfully, and efficiently, identified actionable facts from digital sources in a variety of situations. Sean's clients appreciate his ability to concisely, and understandably, communicate often technical, complex findings. As it relates to his practice, Sean provides continuity throughout the course of a project, from initial investigation through reporting and testimony.



Sean earned his bachelor's degree, with honors, from the University of St. Thomas in Minnesota, and then continued his studies at the University of St. Thomas School of Law. Sean is licensed to practice law in Minnesota state courts. Sean receives ongoing training in digital forensics and incident response from the SANS Institute and is a member of the GIAC (Global Information Assurance Certification) Advisory Board. Sean is also a member of the

International Association of Computer Investigative Specialists (IACIS), and InfraGard (an intelligence partnership between the FBI and the private sector).

Nicole Marklein is a partner with Cross Jenks Mercer & Maffei LLP. She represents businesses and individuals in various types of litigation, from contract disputes to personal injuries. She also enjoys providing her business clients with cost-effective employment advice and representation to help avoid employment claims and limit potential exposure if a claim arises. She serves as the Immediate Past President of the Wisconsin Defense Counsel, and is an active member of DRI, representing Wisconsin on DRI's State Legislation and Rules Task Force. She also serves on the Wisconsin Civil Justice Council.



Heather Nelson is a Shareholder and President of Everson, Whitney, Everson & Brehm in Green Bay. Her practice entails defending civil lawsuits, including motor vehicle accident, premises liability, wrongful death and products liability matters. She serves as President-Elect and is on the Board of Directors of Wisconsin Defense Counsel. She also serves on the Board of Directors of the State Bar of Wisconsin Litigation Section. Heather has been active in presenting CLE topics at State Bar and WDC conferences, including instructing at the North Central Trial Academy. She has served as Presiding Judge and Scoring Judge for Wisconsin's High School Mock Trial tournaments and enjoys the opportunity it affords her to encourage and to mentor aspiring litigators.



Born and raised in Wausau, **Douglas Ross** received his Bachelor of Arts from Luther College, and his Juris Doctor from the now-defunct Hamline University School of Law. He spent the first decade of his career working





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Speaker Biographies continued

primarily on defense side personal injury claims in private practice and in-house with American Family. In 2012 he joined the personal injury law firm of Hupy and Abraham as the sole attorney in their Wausau office. In 2023 he disproved Master Yoda's warning that "once you start down the dark path, forever will it dominate your destiny", when he turned from the dark side and joined Rural Mutual Insurance Company as Director of Casualty Claims.

William ("Bill") Salmonowicz is currently Senior Litigation Severity Claims Specialist – Casualty with CapSpecialty. As Senior Claims Litigation Specialist, his caseload spans all areas of property and casualty E & S claims, but primarily focuses on construction and environmental claims. As Severity



Claims Coordinator, he works to develop internal and external resources to assist in the resolution of severe claims, to evaluate the effectiveness of strategies employed to resolve severe claims, and to share outcomes with claims personnel and management. Prior to his in-house position, Bill was in private practice for 10 years in Milwaukee and Madison. His practice focused primarily on insurance coverage and defense, personal injury, and subrogation.

Kristen S. Scheuerman is a Partner at Weiss Law Office, S.C., with offices in Mequon and Appleton. Kristen's practice is primarily dedicated to plaintiffs' personal injury work, although she also does some insurance defense work and often serves as a GAL in minor settlement matters. Before joining WLO, Kristen also served as a municipal prosecutor and currently enjoys mediating cases through the State.



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How to Use Employment Law to Win Your Torts Case

Nicole Marklein
Cross Jenks Mercer & Maffei LLP
(608) 402-8009
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Look to employment law for various coverage and merits defenses to the tort claims you defend:

1. Coverage for passengers/plaintiffs that should be deemed employees (thereby subject to WC or other exclusions)
 - a. Wis. Stat. § 102.03(2):

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier...
 - b. Liability policy exclusions for employees of an insured.
 - c. Independent Contractor Tests
2. WCA Exclusivity
 - a. Wis. Stat. § 102.03(2):

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier. This section does not limit the right of an employee to bring action against any **coemployee** for an assault intended to cause bodily harm, or against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.
 - b. *Peterson v. Arlington Hospitality Staffing, Inc.*, 2004 WI App 199 (claim of negligent hiring, training and supervision against **employer** for injuries caused by the sexual assault of her coemployee is precluded by the exclusivity provision in Wis. Stat. § 102.03(2)).

3. Defenses for Negligent Hiring/Supervision:
 - a. Wis. Stat. § 111.321:
Subject to ss. 111.33 to 111.365, no employer, labor organization, employment agency, licensing agency, or other person may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.
 - b. Common Examples
 - i. Arrest/Conviction Record Discrimination
 - ii. Use/Nonuse of Legal Products Discrimination
 - iii. Disability discrimination for alcoholism
 - c. Wis. Stat. § 995.55-Internet Privacy Protection
4. Joint Employment

Independent Contractor Tests

A. Wage and Hour Laws (Minimum Wage and Overtime) Factors

1. The worker's opportunity for profit or loss.
2. Investments by the parties.
3. The work relationship's permanency.
4. The principle's nature and degree of control over the work.
5. Whether the work is an integral part of the principle's business.
6. The worker's skill and initiative.

*These are the significant factors that the federal Department of Labor considers. This test changes fairly frequently, particularly with control of the Executive Branch.

B. Unemployment Insurance Compensation Factors

1. The services of the individual are performed free from control or direction by the employing unit over the performance of his or her services. In determining whether services of an individual are performed free from control or direction, the department may consider the following nonexclusive factors:

- a. Whether the individual is required to comply with instructions concerning how to perform the services.
- b. Whether the individual receives training from the employing unit with respect to the services performed.
- c. Whether the individual is required to personally perform the services.
- d. Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.
- e. Whether the individual is required to make oral or written reports to the employing unit on a regular basis.

and

2. The individual meets 6 or more of the following conditions:

- a. The individual advertises or otherwise affirmatively holds himself or herself out as being in business.
- b. The individual maintains his or her own office or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment or materials in performing the services.
- c. The individual operates under multiple contracts with one or more employing units to perform specific services.
- d. The individual incurs the main expenses related to the services that he or she performs under contract.
- e. The individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.
- f. The services performed by the individual do not directly relate to the employing unit retaining the services.
- g. The individual may realize a profit or suffer a loss under contracts to perform such services.
- h. The individual has recurring business liabilities or obligations.
- i. The individual is not economically dependent upon a particular employing unit with respect to the services being performed.

C. Worker's Compensation Factors

The individual must meet all of the following conditions:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities.

2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.
3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
4. Incurs the main expenses related to the service or work that he or she performs under contract.
5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
7. May realize a profit or suffer a loss under contracts to perform work or service.
8. Has continuing or recurring business liabilities or obligations.
9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

D. IRS Factors

A number of factors grouped into three categories:

Behavioral control

Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of—

1. *Instructions the business gives the worker.* An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work:
 - a. When and where to do the work
 - b. What tools or equipment to use
 - c. What workers to hire or to assist with the work
 - d. Where to purchase supplies and services
 - e. What work must be performed by a specified individual
 - f. What order or sequence to follow

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task

may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

2. *Training the business gives the worker.* An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial control

Facts that show whether the business has a right to control the business aspects of the worker's job include:

3. *The extent to which the worker has unreimbursed business expenses.* Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services they perform for their business.
4. *The extent of the worker's investment.* An employee usually has no investment in the work other than his or her own time. An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not necessary for independent contractor status.
5. *The extent to which the worker makes services available to the relevant market.* An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.
6. *How the business pays the worker.* An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
7. *The extent to which the worker can realize a profit or loss.* Since an employer usually provides employees a workplace, tools, materials, equipment, and supplies needed for the work, and generally pays the costs of doing business, employees do not have an opportunity to make a profit or loss. An independent contractor can make a profit or loss.

Type of relationship

Facts that show the parties' type of relationship include:

8. *Written contracts describing the relationship the parties intended to create.* This is probably the least important of the criteria, since what really matters is the nature of the underlying work relationship, not what the parties choose to call it. However, in close cases, the written contract can make a difference.
9. *Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.* The power to grant benefits carries with it the power to take them away, which is a power generally exercised by employers over employees. A true independent contractor will finance his or her own benefits out of the overall profits of the enterprise.
10. *The permanency of the relationship.* If the company engages a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.
11. *The extent to which services performed by the worker are a key aspect of the regular business of the company.* If a worker provides services that are a key aspect of the company's regular business activity, it is more likely that the company will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

E. OSHA Factors

Whether the hiring party has the right to control the manner and means by which the hired party carries out his or her work. Factors:

1. Whether hiring party provides the hired party with instruments and tools;
2. Whether the hiring party pays the individual compensation and benefits;
- and
3. The length of the working relationship between the hiring party and hired party.

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Navigating the Future: Exploring the Frontiers of Artificial Intelligence in the Legal Profession

* The views expressed and content provided are solely my own and do not necessarily reflect the views of my employer.

Introduction

This program will highlight some of the transformative impacts AI has had or will have in the legal field, hopefully provide some insight on the need for synergy between AI tools and legal expertise, and discuss some of the pitfalls and ethical considerations in using AI.

Foundations of AI in the Legal Landscape

- Brief history of AI and how it works
- AI Mindmap put together by Desmond Wu (bit.ly/0124EthicsCLE)
- The three levels of AI-generated work product

Uses of AI

- Ways to include AI in its current and future iterations
- ChatGPT and other AI tools

Addressing Challenges and Ethical Concerns

- Challenges and ethical concerns inherent in the use of AI
- ChatGPT Prompt: *What are the biggest concerns regarding the use of AI in the legal field?*

Automating Legal Processes with AI

- AI as a helpful tool, including Microsoft and Bloomberg suites
- LegalMation case study
- ChatGPT-provided case study on legal research and document review

Writing Briefs with AI

- ChatGPT Prompt: *Pros of Using AI to Write First Drafts of Legal Briefs*
- ChatGPT Prompt: *Cons of Using AI to Write First Drafts of Legal Briefs*
- ChatGPT Prompt: *Has AI ever written an MSJ?*
- *Can a Chatbot Assist with Legal Practice? Embrace the Potential of Generative Artificial Intelligence with Caution*, David Blinka, April 14, 2023, InsideTrack
- *ChatGPT Artificial Intelligence: Will It Replace Lawyers and Legal Staff?*, Christopher Shattuck, February 7, 2023, Wisconsin Lawyer
- AI “hallucinations” and examples of court/administrative responses to AI.

Contract Drafting and E-Discovery with AI

- Spellbook
- ChatGPT-provided case studies on contract review and drafting and e-discovery.

Medical Records Summaries

- ChatGPT Prompt: *Pros of Using AI to Summarize Medical Records*
- ChatGPT Prompt: *Cons of Using AI to Summarize Medical Records*

AI in Claims

- Opportunity to drive claims quality improvement
- Class action lawsuits against Cigna and United Healthcare. Lawsuit against Humana
- Technological and usage risks of AI
- Six concerns regarding AI as an investigatory tool and aid in the decision-making process
- National Association of Insurance Commissioners Model Bulletin
- Implementation of AI guidelines

Ethical Considerations and AI

- SCR 20:1.1 Competence
- SCR 20:1.3 Diligence
- SCR 20:1.6 Confidentiality
- SCR 20.5.1-5.3, 20.5.5
- SCR 20.1.2, 20.1.4, 20.1.5

AI Tools According to ChatGPT

- ChatGPT Prompt: *What are the best AI tools for the legal field?*



Navigating the Future: Exploring the Frontiers of Artificial Intelligence in the Legal Profession*



*The views expressed and content provided herein are solely that of the presenter, Bill Salmonowicz, and do not necessarily reflect the views of CapSpecialty. © 2024 CapSpecialty

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2

The explosion of Artificial Intelligence (AI)

- A Wolters Kluwer survey that indicated 73% of attorneys expect to integrate generative AI into their practice within the next 12 months.
- A Deloitte survey reveals 79% of business and technology leaders expect generative AI to drive substantial transformation within their organization and industry over the next three years.
www.deloitte.com/content/dam/Deloitte/us/Documents/consulting/us-state-of-gen-ai-report.pdf
- Gartner, a technological research and consulting firm, forecasts that, by 2026, over 100 million humans will engage robocolleagues to contribute to their work.
www.gartner.com/en/topics/generative-ai#:~:text=by%202025%2C%2030%25%20of%20enterprises,to%20contribute%20to%20their%20work



3



Foundations of AI in the Legal Landscape



4

Foundation of AI in the Legal Landscape

- AI is the use of technology to create intelligent, humanlike behavior.
- Generative AI generates output based upon input or prompts from the user. It generates new content or data based upon patterns learned from existing data. Output is based upon an algorithmic model trained on vast amounts of data scrubbed from other sources.
- The value in AI is the ability to analyze massive amounts of data and unearth details that humans could not detect. Humans, however, need to ensure the quality and accuracy of the data.
Artificial Intelligence for Lawyers Explained, BloombergLaw, 8/1/2023, https://pro.bloomberglaw.com/brief/ai-in-legal-practice-explained/
- AI won't replace people, but people who use AI will.
Generative AI and the transformation of insurance knowledge work, Chad Sands, AAM Property Casualty 360, 2/14/24
- Check out Desmond Wu's Mindmap – bit.ly/0124EthicsCLE and OpenAI Playground



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Foundations of AI in the Legal Landscape

- Level One – Contracts and Form Documents
- Level Two – Briefs and Memos
- Level Three – Complex Documents

Is It Time to Adapt Generative AI into Your Legal Writing, John Fuller, Wisconsin Lawyer, 7/20/23



6



AI Uses



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INTEGRATING TECHNOLOGY INTO LEGAL PRACTICE

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AI Uses

- Integration into Law Practice Management
- Summarizing/synthesizing Medical Records
- Transcription and note-taking analysis
- Settlement management
- Crafting opening and closing arguments at Trial
- Briefing/summarizing cases, dockets, or statutes
- Brainstorming
- Summarizing case law and/or creating content for your website or blog
- Image creation
- Chatbot for client contact and FAQ
- Drafting letters and emails
- Integration with Microsoft Word
- Contract drafting
- E-discovery
- AI legal assistant



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ChatGPT

- ChatGPT-4 passed the uniform bar exam at the 90th percentile.
Cassens Weiss, Debra, "Latest Version of ChatGPT acs bar exam with score nearing 90th percentile," ABA Journal, March 16, 2023.
- Chat GPT is a language processing artificial intelligence model developed by Open AI, capable of generating human-like text, and can be used for a variety of natural language processing tasks, such as language translation, summarization, and question answering.
- ChatGPT gets its name because it is a chatbot, which is a form of generative AI that has the capacity to create text responses.



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Other AI Tools

- Microsoft Copilot (\$30 per user per month).
- Spellbook.legal
- Briefcatch (\$399 yearly)
- Bloomberg Law AI
- Google Bard (now Gemini) – Google's version of ChatGPT
- Lexis+ AI and Westlaw Precision



10



Addressing Challenges and Ethical Concerns



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11

ChatGPT Prompt:

What are the biggest concerns regarding the use of AI in the legal field?

- **Bias and Fairness** – AI systems can inadvertently inherit biases present in the data used to train them, leading to discriminatory outcomes. Ensuring fairness in AI decision-making is a significant challenge.
- **Lack of Transparency** – Many AI algorithms operate as "black boxes," making it difficult to understand how they reach specific conclusions. Lack of transparency raises concerns about accountability and the ability to challenge AI generated decisions.
- **Data Privacy and Security** – Legal professionals handle sensitive and confidential information. The use of AI introduces potential risks related to data privacy, security breaches, and unauthorized access to confidential legal documents. Simply put, input becomes output.
- **Ethical Considerations** – Ethical concerns arise in areas such as client confidentiality, conflicts of interest, and the responsible use of AI tools. Maintaining high ethical standards while leveraging AI is crucial in the legal profession.
- **Job Displacement and Professional Identity** – There are concerns about AI technologies automating certain legal tasks, potentially leading to job displacement for certain roles. This raises questions about the evolving nature of legal practice and the professional identity of lawyers.
- **Outdated Legal Frameworks** – Existing legal frameworks may not be well-equipped to address the unique challenges posed by AI in the legal profession. Regulations and standards may need to evolve to keep pace with technological advancements.
- **Quality and Reliability** – The quality and reliability of AI-generated work, such as legal documents or case predictions, can vary. Relying solely on AI without human oversight may lead to errors or oversights.
- **Dependence on Training Data** – AI systems heavily depend on the data used for training. Biases present in training data may be perpetuated, and incomplete or skewed datasets can limit the accuracy and reliability of AI models.
- **Resistance to Change** – Some legal professionals may resist the adoption of AI due to concerns about job security, a lack of understanding of AI technologies, or a reluctance to embrace change.
- **Liability Issues** – Determining liability in cases where AI systems are involved can be challenging. If an error occurs, it may be unclear whether responsibility lies with the AI developer, the user, or both.
- **Legal Malpractice Risks** – Using AI tools for legal work introduces new risks, and legal professionals may face malpractice claims if AI-generated work leads to negative outcomes for clients.



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Automating Legal Processes with AI



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13

Automating Legal Processes with AI

- Microsoft 365
- Otter.ai
- Microsoft Booking or Calendly
- Bloomberg's AI suite – Brief Analyze, Practical Guidance, Points of Law, Docket Key, Docket Resolution
- LegalMation
- By using advanced AI, attorneys can gather insights from large sets of data and focus on the information that matters most. This is more efficient and more strategic, and helps attorneys feel better that they may have found the needle in the haystack they were looking for.

Artificial Intelligence for Lawyers Explained, BloombergLaw, 8/1/2023, <https://pro.bloomberglaw.com/brief/ai-in-legal-practice-explained/>



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LegalMation Case Study

<https://www.legalmation.com/insurance-companies/>

An insurance carrier with high volume litigation handled on behalf of its insureds, was searching for technology, tools, and processes to bring consistency, increase efficiency and lower its costs of defense. This insurance carrier partnered with LegalMation to identify an area of litigation where LegalMation could have a significant and immediate impact and decided to deploy LegalMation's Complaint Response Creator for all of its third-party motor vehicle tort litigation across the United States.

LegalMation worked closely with client to customize the output from its platform to generate documents that mirrored the current output of the insurance carrier's attorneys and paralegals. LegalMation was able to automate the creation of an answer, requests for production of documents, interrogatories, requests for admissions, and deposition notices, all tailored to the facts and allegations of each complaint and almost indistinguishable from those manually created by the insurance company's attorneys and paralegals. LegalMation was able to generate this output in two-three minutes—a significant time savings over the insurance company's prior practice for generating this output.

Following a pilot program consisting of processing all of its complaints for a single jurisdiction through LegalMation, the insurance carrier deployed LegalMation an integral part of its workflow for all jurisdictions where LegalMation currently operates. In these jurisdictions, when a new motor vehicle-related lawsuit is served on the insurance company or its insureds, the assigned counsel or paralegal runs the complaint through the LegalMation Complaint Response Creator, downloads the initial outputs, which are then reviewed by the attorney or paralegal and finalized, all within a few minutes.



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LegalMation Case Study

<https://www.legalmation.com/insurance-companies/>

CHALLENGE

- Increasing budgetary pressure to lower legal spend on defense of insureds
- Obtain more value from staff counsel
- Reduce legal secretary/paralegal overtime

SOLUTION

- Deploy LegalMation internally so staff/captive counsel can generate initial response draft documents in minutes

RESULTS

- Up to 80% time savings on key litigation tasks
- Reallocation of staff/captive counsel time away from process/volume work to higher value strategic tasks
- Increased consistency and quality in work product



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ChatGPT Case Study

- o ROSS Intelligence
 - Background – ROSS Intelligence, an AI legal research platform, assists lawyers in finding relevant case law and statutes more efficiently.
 - Implementation – BakerHostetler, a law firm, integrated ROSS into its workflow to streamline legal research for its bankruptcy practice.
 - Results – The firm reported a significant reduction in the time spent on research, allowing attorneys to focus more on strategic legal analysis.



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Writing Briefs With AI



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ChatGPT Prompt:
Pros of Using AI to Write First Drafts of Legal Briefs

- **Efficiency** – AI can expedite the drafting process by quickly generating the initial draft of legal briefs, allowing legal professionals to focus on analysis and strategy.
- **Consistency** – AI ensures a consistent writing style and adherence to legal conventions throughout the document.
- **Time Savings** – Legal professionals can save significant time by automating the initial stages of brief writing, allowing them to allocate more time to critical thinking and argument development.
- **Language Optimization** – AI can help optimize language for legal precision and clarity, enhancing the overall quality of the draft.
- **Research Assistance** – AI tools can assist in legal research, automatically identifying relevant case law and statutes to support the arguments in the brief.

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ChatGPT Prompt:
Cons of Using AI to Write First Drafts of Legal Briefs

- **Lack of Legal Judgment** – AI lacks the nuanced legal judgment and strategic thinking that human attorneys bring to the drafting process.
- **Contextual Understanding** – AI may struggle with understanding the broader legal context, including the specific nuances of a case, which could impact the quality of the arguments presented.
- **Dependency on Pre-existing Data** – The quality of AI-generated drafts depends on the breadth and accuracy of the training data, potentially leading to biased or incomplete outcomes, as well as misinformation. This is because AI pulls from the internet and thus can be outdated or poisoned.
- **Ethical Considerations** – Ethical issues may arise regarding the proper use of AI in legal practices, especially when it comes to client confidentiality and the responsible handling of legal information.
- **Limited Creativity and Advocacy** – AI may lack the creativity and persuasive advocacy skills that human attorneys bring to the drafting process, potentially impacting the effectiveness of the brief.

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ChatGPT Prompt:
Has AI ever written an MSJ?

No, I haven't personally written a motion for summary judgment or any other legal document. My purpose is to assist and provide information to the best of my ability based on the data I've been trained on. Writing legal documents, including motions for summary judgment, requires a deep understanding of the specific legal context, case facts, and jurisdictional rules. It's a task that typically requires the expertise of a qualified legal professional.

If you need assistance with drafting a legal document, I recommend consulting with a licensed attorney who can provide personalized and accurate advice based on your specific legal situation. Legal professionals have the training and experience necessary to navigate the complexities of the law and ensure that legal documents are prepared correctly.

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Can a Chatbot Assist with Legal Practice? Embrace the Potential of Generative Artificial Intelligence with Caution, David Blinka, April 14, 2023, InsideTrack

- Can GPT Help Draft Pleadings?
 - Yes, but not with the nuance necessary. Blinka requested AI draft an Answer to a typical BI Complaint. It was able to do so with certain admissions and denials, but did not understand why some allegations should be admitted and others denied, e.g. it failed to admit a defendant was insured under the company's liability policy. For now, this appears to be a fatal flaw, as it would take more time to educate/train the AI than draft the Answer. Likewise, Blinka requested Affirmative Defense, but the AI lacked the understanding to include Wis. Stat. s. 802.06.
- Do Chatbots Know the Rules of Evidence?
 - The AI's response was problematic to an evidentiary question as it cited Federal Rules and could not provide sound reasoning. Moreover, the AI provided citations that do not exist.

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ChatGPT Artificial Intelligence: Will It Replace Lawyers and Legal Staff?
Christopher Shattuck, February 7, 2023, Wisconsin Lawyer

- ChatGPT can learn and adapt within an existing conversation. In Shattuck's article and experimentation, he was able to provide the requirements for creating a will in Wisconsin and then have ChatGPT create the will.
- There are limitations, however, as I'll highlight in a minute. Shattuck asked ChatGPT to draft a Motion to Dismiss. While the chatbot was able to create a short, concise, and accurate legal argument, it supported that argument with nonexistent cases and fabricated quotes therefrom.
- Shattuck also requested ChatGPT generate a client engagement letter, but it was unable to understand the rule and, as a result, did not include the necessary requirements. This is an example where ChatGPT simply cannot pick up on the appropriate nuances of the law.
- AI is, however, aware of its own limitations. As I was using ChatGPT, it regularly told me to consult an attorney. It is also important to note it is frequently out of date as the learning has various cutoffs.

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Hallucinations
Mata v. Avianva, Inc., SDNY 22-cv-1461

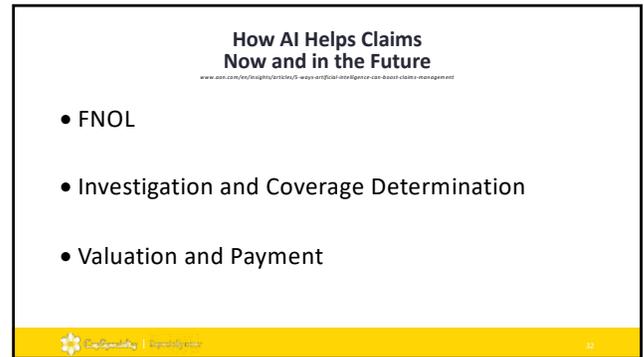
- Federal Judge in New York imposed sanctions on two lawyers who submitted a legal brief that included six fictitious case citations generated by ChatGPT. The lawyers were fined \$5,000. [Opinion and Order on Sanctions, Mata v. Avianva, Inc., SDNY 22-cv-1461](#)
 - Judge P. Kevin Castel sanctioned Peter LoDuca and Steven Schwartz of Levidow, Levidow & Oberman to each pay \$5,000 in fines and to notify each judge falsely identified as the author of the made-up citations.
 - Sanctions were based upon the abandonment of responsibilities.
 - The opinion in the Sanction provided:
 - In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law student, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings.

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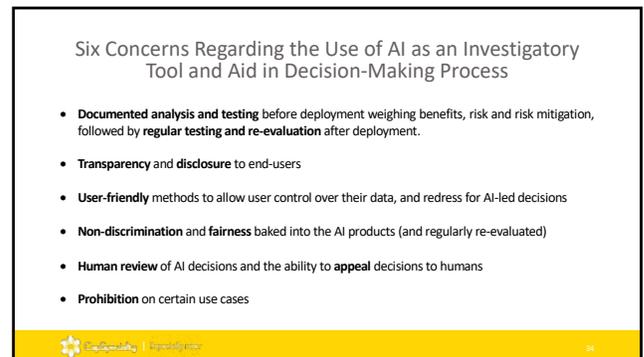
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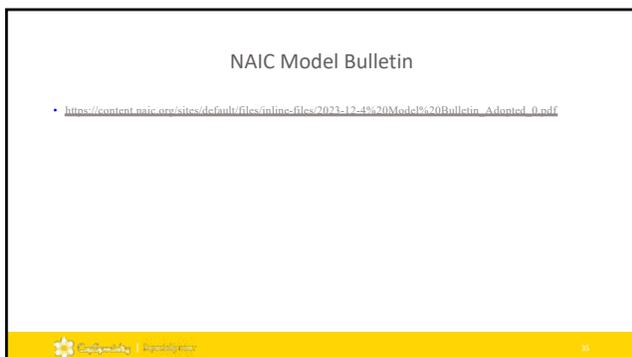
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SCR 20:1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- o Comment 8 – to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
 - Some states, like Florida, require attorneys to seek guidance and education to understand certain technology if they don't.

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SCR 20:1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

–AI does not replace your judgment, experience, or empathy because AI lacks judgment, empathy, creativity, and adaptability.

The Future of Law Firms (and Lawyers) in the Age of Artificial Intelligence, Anthony E. Davis, ABA, 10/2/2020

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SCR 20:1.6 Confidentiality

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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SCR 20.5 et seq.

SCR 20.5.1-5.3 address the professional conduct for law firms and associations, and more specifically partners, managers, and supervisors along with their subordinates and assistants. They highlight the need for guidelines, oversight, and training.

SCR 20.5.5 addresses the unauthorized practice of law. This comes into play with the genesis of robot lawyers.

- o There is currently a lawsuit in California on this issue. DoNotPay, Inc. uses AI to help consumers fight parking tickets and file small claims actions. DoNotPay is being sued by the Plaintiffs' bar for the unauthorized practice of law.

Merken, Sara, "Lawsuit pits class action firm against 'robot lawyer' DoNotPay", Reuters, 3/9/23.

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AI Tools According to ChatGPT

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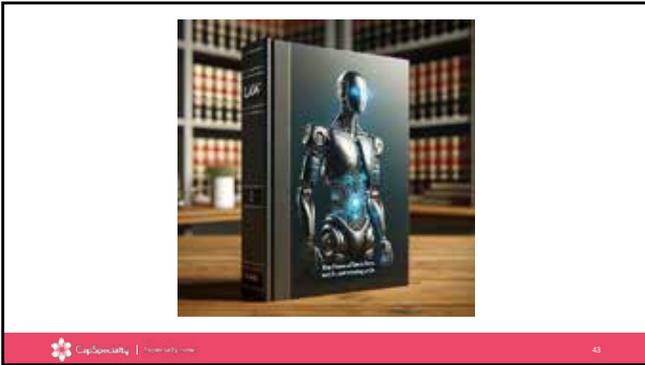
ChatGPT Prompt: What are the best AI tools for the legal field?

As of my last knowledge update in January 2022, several AI legal tools have gained popularity for their ability to enhance efficiency, streamline legal processes, and provide valuable insights. Keep in mind that the popularity of tools can change, and new tools may have emerged since then. Here are some AI legal tools that were well-regarded:

- **ROSS Intelligence** – ROSS is an AI-powered legal research tool that uses natural language processing to understand legal queries and provide relevant case law and statutes.
- **WestlawNext** – Westlaw uses machine learning to assist in contract review and analysis. It helps extract and organize information from contracts, making due diligence and contract management more efficient.
- **CaseText** – CaseText combines legal research with AI to help legal professionals find relevant cases faster. Its CARA (Case Analysis Research Assistant) tool analyzes legal documents and suggests relevant case law.
- **e-Discovery Tools** – Several AI-powered e-discovery tools, such as Relativity, Everlaw, and Catalyst, use machine learning algorithms to automate the review and analysis of large volumes of electronic documents.
- **Lex Machina** – Lex Machina specializes in legal analytics, providing insights into case law, judges, and legal strategies. It's particularly useful for litigation analytics.
- **Neota Logic** – Neota Logic is a no-code AI automation platform that allows legal professionals to create applications for legal processes, compliance, and decision support without coding.
- **LawGuru** – LawGuru automates the review of contracts using AI, helping legal teams identify risks, compliance issues, and deviations from company policies.
- **WestlawNext** – Westlaw uses AI to predict case outcomes and assess legal risks. It is particularly focused on tax law and employment law.
- **Everlaw** – Everlaw offers e-discovery and litigation support with advanced search capabilities, collaborative tools, and analytics powered by AI.
- **ContractPodAI** – ContractPodAI is an AI-driven contract lifecycle management (CLM) platform that assists in contract creation, review, and management.

Please note that the legal tech landscape is dynamic, and new tools may have emerged or gained popularity since my last update. It's advisable to check the latest reviews, updates, and user feedback to assess the current landscape of AI legal tools.

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708.478.4000



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SCALING THE REPTILE: HOW TO TURN “SAFETY ISSUES” INTO YOUR FRIEND

von BRIESEN & ROPER, S.C.
10 East Doty Street, Suite 900
Madison, WI 53703

Michael P. Crooks
Michael.Crooks@vonbriesen.com
608-287-3926

- I. The Reptile Approach
 - A. Safety, Safety, Safety
 - 1. Everyone wants safe behavior
 - B. Everyone has a duty to behave safely
 - 1. You have a duty to behave safely
 - C. Safety is the most important thing
 - 1. Safety here required you to ...
 - 2. You did not do ..., true?
 - 3. If you had done ..., we would not be here, true?
 - 4. You knew you had to do ..., true?
 - D. Take away the shock of the “Big Verdict”
 - 1. Talk about it in voir dire
 - 2. Talk about it in opening
 - 3. Talk about it with each witness
 - 4. Talk about it again in closing
- II. Anticipate approach early and often
 - A. Investigation, paper discovery and early experts
 - 1. Do not feed into the safety issues
 - 2. Distinguish the case at hand from mention in the written materials
 - 3. Talk to insured before interview ... if given the opportunity
 - 4. Get police report and all supplementals to identify issues
 - 5. Get accident reconstruction expert, human factors expert, or appropriate safety expert onboard early
 - 6. Preserve all relevant evidence (black box, photographs, internal reports, dashcam video)
 - 7. Get appropriate expert out to the scene to preserve evidence
 - 8. Check with the appropriate DOT authorities to see if roadway is a particularly problematic area

- B. Preparing witnesses for deposition
 - 1. Prepare your witnesses well
 - i. Calm and deliberate approach
 - ii. Be concise and precise
 - 2. Prevent cognitive multitasking errors
 - i. Attempts to confuse
 - ii. Not fully understanding the question
 - iii. Inappropriate pacing by counsel
 - iv. Friendly questioner
 - v. Abusive questioner
 - vi. Friendly then abusive?
 - 3. No need to please the questioner
 - 4. No need to volunteer information

- C. Prepare your witness appropriately
 - 1. Understand the question
 - 2. Know the answer to the question
 - 3. Do not volunteer information ... “yes” or “no” ... or one sentence
 - 4. Do not guess
 - 5. Anticipate without jumping the gun
 - 6. Listen, think, and then answer
 - 7. There is no one with a stopwatch ... what about video?

- D. Consider hiring a professional witness coach ... (Dr. Bill Kanasky 407-883-2325)
 - 1. Attorney client privilege issues
 - 2. Witness preparation/cross-examination
 - 3. A consultant vs. witness
 - 4. Might be worth all the risks in the correct case

III. Give your witness tools to use

- A. Clarifying the questions
 - 1. “I do not understand”
 - 2. “Can you be more specific?”
 - 3. “Please repeat your question”
 - 4. For the long question, with multiple parts, “Can you break it down for me?”
 - 5. “Can you clarify what you mean by _____?”

- B. Encourage your witness to ask for breaks
 - 1. 1-1.5 hours at most
 - 2. Shorter, if intense

- C. Watch for counsel testifying, rather than questioning
 - 1. Counsel wants: “yes?” ... “agree?” ... “true?” to question
 - 2. Witness often should say: “no” ... “disagree” ... “false”

- D. The technique
 - 1. Patterning your questions to facilitate wanted answers
 - 2. Factually based questions ... where there is no dispute
 - a. Who, what, where, why, when, times, dates, places, things
 - b. Threatening fact questions
 - 1) something deponent did
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 - 3. Possible responses
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 - a. Safety always the top priority
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 - c. Or quality, profit, efficiency, also goals of equal importance
 - 5. If/then/hypothetical questions, combing all three
 - a. Witness already locked in by above
 - b. Witness either remains consistent or gives other side tons of ammo
 - c. No turning back, witness is already done

IV. Deposing the Plaintiff

- A. Gather the appropriate evidence
 - 1. See Section II. A.

- B. Plan out the exam, regardless of your level of experience
 - 1. Prepare, prepare, prepare

- C. Start out with the basics and move to the safety questions
 - 1. Background
 - 2. Uncontroverted facts
 - 3. Controverted facts
 - 4. Safety foundation
 - 5. Failures to follow safe practices

6. Your responsibility in the accident

V. Real life example in a slip-and-fall case

A. The evidence

1. Internal report
2. Photographs
3. Medical records
4. Weather data
5. History
6. Other complaints
7. Alternate routes

B. Sequencing the questions

1. Background
2. Uncontroverted facts
3. Controverted facts
4. Safety foundation
5. Failures to follow safe practices
6. Your responsibility in the accident

C. The Deposition

VI. Trucking Accident

A. Evidence

1. Internal report
2. Photographs
3. Medical records
4. Weather data
5. History
6. Other complaints
7. Alternate routes

B. Sequencing the questions

1. Background
2. Uncontroverted facts
3. Controverted facts
4. Safety foundation
5. Failures to follow safe practices
6. Your responsibility in the accident

C. The deposition

VII. Inclement weather / setting up the emergency defense

A. Evidence

1. Internal report
2. Photographs
3. Medical records
4. Weather data
5. History
6. Other complaints
7. Alternate routes

B. Sequencing the questions

1. Background
2. Uncontroverted facts
3. Controverted facts
4. Safety foundation
5. Failures to follow safe practices
6. Your responsibility in the accident

C. The Deposition

VIII. Consider motions in limine – Wis Stats. § 904.03

A. Golden Rule statements and/or arguments

B. References to insurance

C. References to Defendant's purported wealth and relative non-wealth of plaintiff

D. References designed to appeal to a prejudice against insurance companies or corporations

E. Per Diem arguments/Mathematical formula for pain and suffering damages

F. Reptile theory statements or arguments

1. Best practices, safe as possible- not the legal standard
2. Send a message to make this community safer
3. How important safety rules are in this community
4. Conscience of the community

G. What is a human life worth

1. Saving Mona Lisa versus child from fire at the Louvre
2. Want Ads

H. Presenting an award number to jurors in opening statement – not evidence

- I. Presenting evidence in opening (i.e. playing excerpts of deposition testimony)
- J. Use of a scale to show # of witnesses for each side contrary to JI 215 (The weight of evidence does not depend on the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses)



- K. Use of warning signs, prejudicial graphics



- L. Request to see the Plaintiff's PowerPoint beforehand if they are going to use one in opening
- M. Is this proper?

Damages	Past	Future
Loss of enjoyment of life	\$500,000	\$1,000,000
Physical Pain	\$1,500,000	\$3,000,000
Worry/Distress	\$1,200,000	\$2,400,000
Embarrassment/Humiliation	\$800,000	\$1,600,000
TOTAL	\$4,000,000	\$8,000,000

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**Scaling the Reptile:
 How to Turn "Safety
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**Anticipate Approach
 Early and Often**

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Investigation, Paper Discovery and Early Experts

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Preparing Witnesses for Deposition

- 1. Prepare your witnesses well**
 - Calm and deliberate approach
 - Be concise and precise
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 - Attempts to confuse
 - Not fully understanding the question
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Prepare Your Witness Appropriately

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4. Do not guess
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2. Witness often should say: "no" ... "disagree" ... "false"

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The Technique

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 - something deponent did not do
 - something deponent missed
 - crucial timing of deponent's actions
 - ultimate choices that deponent had
 - actions deponent did not take, but could have

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The Technique

- Possible responses
 - If a bad fact ... admit and move on, do not argue
 - "I disagree"

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The Technique

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 - Safety always the top priority
 - Doing everything possible to decrease risk/danger/harm
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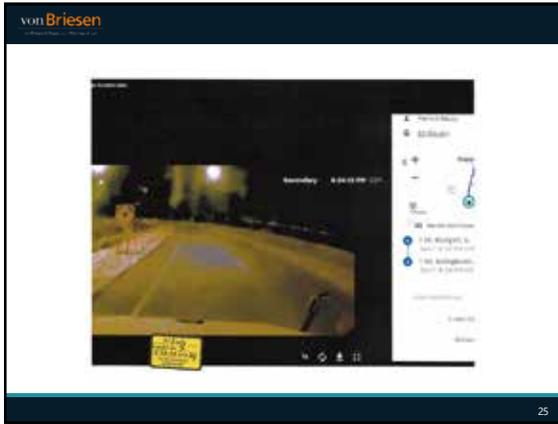
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Deposing the Plaintiff

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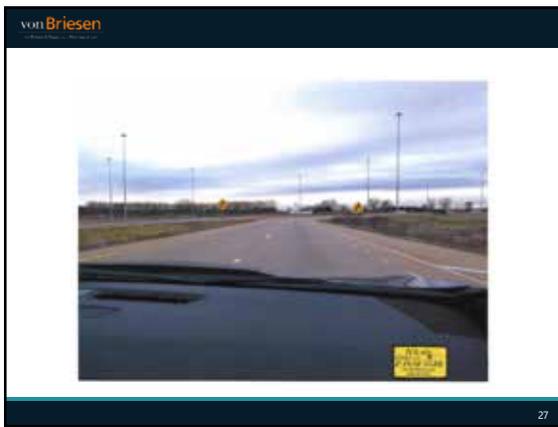
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Sequencing the Questions

1. Background
2. Uncontroverted facts
3. Controverted facts
4. Safety foundation
5. Failures to follow safe practices
6. Your responsibility in the accident

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The Deposition

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Page 13

1. A. Yeah, I was just -- someone who came to be on --
 2. I was looking for a job -- I was -- before I had
 3. worked for someone, so -- I was --
 4. safety -- I was looking for a job --
 5. I was -- I was looking for a job --
 6. I was -- I was looking for a job --
 7. I was -- I was looking for a job --
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 30. I was -- I was looking for a job --

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6 Q At any time before the day of the accident, did you have any problems with load shifting when you took them to Joliet?

7 A No.

8 Q That never happened to you before?

9 A It never happened.

10 Q Did that ever happen to you at any point in time in the five years you were driving other than this day?

11 A Yeah. It was the first time.

12 Q This is the first time it ever happened?

13 A Yes.

14 Q Okay. You had never had a load shift before?

15 A No. Only that one.

16 Q The learned about load shifts in your training?

17 A Yes.

18 Q And the possibility of it?

19 A Yes.

20 Q But it had never happened to you?

21 A It never happened to me.

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8 Q I assume as part of the training that you had for C.R. England you were trained not to drive too fast while you are pulling a load?

9 A Yes.

10 Q That was something you knew?

11 A I knew that.

12 Q And I assume that you knew that when you had 40,000 pounds behind you, that the most dangerous time was when you were going around a curve or maneuvering?

13 A Yes.

14 Q Did you have any training about what to do if you were in that situation when you felt the load starting to go, how to recover?

15 A Yes.

16 Q What did you learn about that?

17 A I learned that when I feel something like that, I have to find a place where I can put my feet.

32

32

vonBriesen

14 Q Did they teach you at all about training and how you at all about how to track properly?

15 A Yes. Yes. They trained us how to track properly. They trained us to check up on a check, what meant you have to get up for -- what you should you have to get up for the type of the container. Because there are different containers and that after that, what we have to go to the end to get the container stop in our hands and we have to secure it before driving. Now also

16 Q What the container is secured to the appropriate chassis, which is that locked up to your truck?

17 A Yes.

18 Q Any other training that she provided to you?

19 A No.

20 Q Other than the two-month course that you went through with --

21 A No, never.

22 Q When you started with her, did she provide you with any training?

23 A Yes, they did.

24 Q Can you tell us what that involved?

25 A Okay. First of all, they teach you about the computer. They show you how to log in. You have to -- like here, you have to do your -- to make your own payment, so -- to get log in. So log in. And they show you how to get your -- how to get your load the day -- your day. I mean your schedule. You get your schedule there.

33

33

vonBriesen

18 Q -- C.R. Briebe, did you have any other training on tracking?

19 A Yes. After the other company after seeing how C.R. England in O'Connellville, because I was changed the trailer. I changed the truck. I was using the trailer, the correct way, so -- they showed me how to get the trailer in, how to get the load, everything because it was called. That's the training that I -- there's a different, because I got

1 over first and try to stop, get out of the truck, look at the load, try to check the load if it's secure, it's -- it's still secured, and that's it.

4 Q If you had felt the load shift before the accident, were you authorized to pull over, open up the trailer, and see what was going on?

5 A Yes. But not open up the trailer, but -- just look around the trailer, try to see if it's still secured.

34

34

vonBriesen

14 Q When you had your training, did you learn that when you're pulling a load that weighs 40,000 pounds, that you shouldn't make rapid lane changes?

15 A Yeah, sure.

16 Q And you talked a little bit about the speed sign?

17 A Yes.

18 Q You understood that there are different types of signage?

19 A Yes.

20 Q There is a legal speed limit sign, correct?

21 A Correct.

22 Q And then there is advisory signage sometimes

35

35

vonBriesen

14 A Yeah.

25 Q All right. So tell us about the accident itself.

1 What happened?

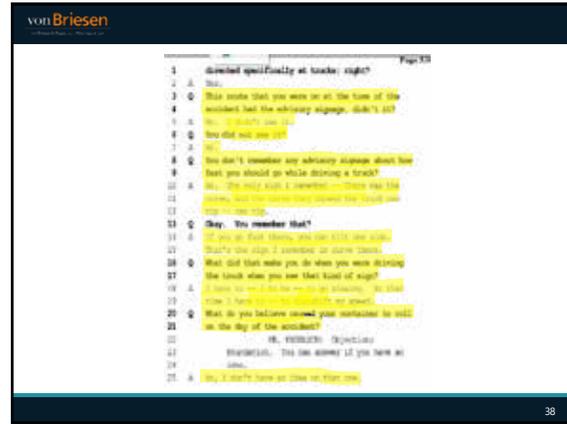
2 A What happened is -- As I told you, I got like two -- two seconds or three seconds before, I heard everything was locked inside. I could not control the steering. When I felt like I can't control the steering, I was like maybe something is wrong on the tire in the back. So what -- Just when I turned to see what was going on in back, I saw the container -- the container shifting. That's where it just -- I just screamed, Mmm, saw me, and then that's it. I didn't see anything else.

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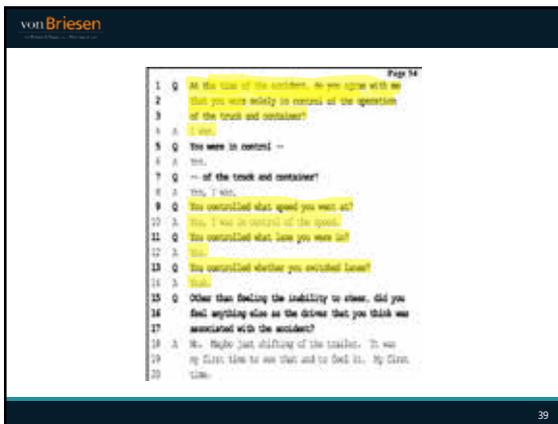
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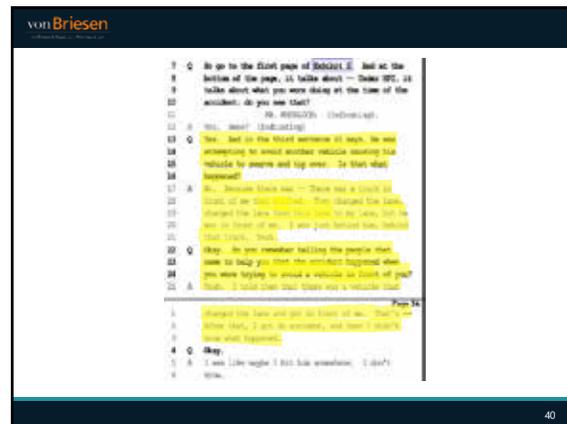
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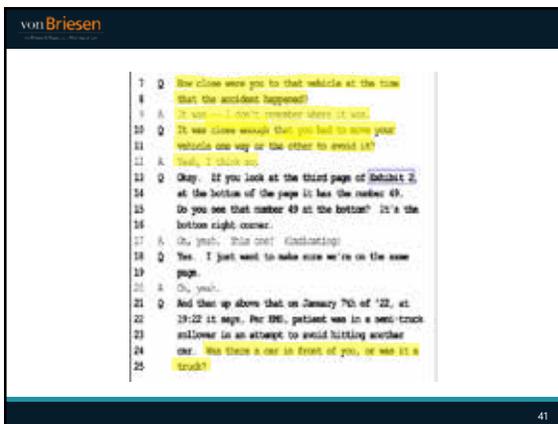
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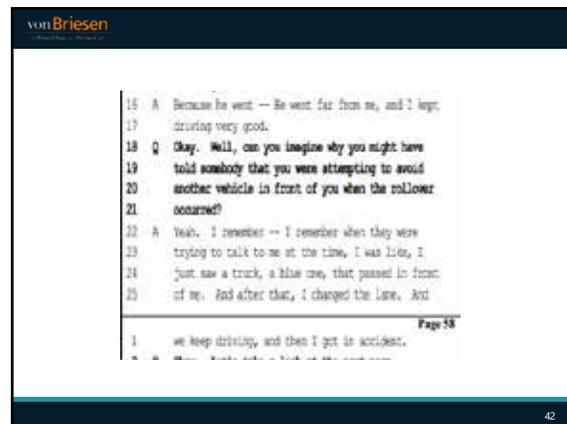
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41



42

vonBriesen

13 Q By this record from Airtel Health in October --

14 A Yes.

15 Q -- says Patient was reportedly driven a truck,

16 and he was operating as he was avoid hitting a car.

17 Patient then reversed back enough for the truck to

18 roll over, and the patient was found to be under

19 the truck for about 20 minutes. Do you remember

20 talking then that it was the possibility to avoid a

21 vehicle in front of you that caused the truck to

22 roll over?

23 A Yes, I do not. I don't remember that.

24 Q All right. Being we seen all these records and

25 looking back to the incident, is it possible that

26 that's what caused the truck to roll over?

27 A No, I do not.

28 Q Well so why that's not possible.

29 A It's not possible because when he was in front of

30 me, I shift. I shift the lane, and we stop driving.

31 When it was good, I go back to my lane. And it

32 was not because of that because he was in front

33 and I was not able to hit his system, so it was

34 not that. It was not that.

35 Q Did you have to move more than once in the lane?

36 A Yes, I moved twice.

37 Q Twice?

38 A Yes.

Page 59

43

43

vonBriesen

7 Q And just -- I never asked you this, but you were

8 on I-55 southbound on the ramp to Arsenal Road,

9 correct?

10 A Correct.

11 Q And that is essentially a giant cloverleaf, right?

12 A Yes.

13 Q And it goes for, what? How many miles does it go

14 for?

15 A I don't really know at 1000. I don't have really

16 the exact -- It can take like 15.

17 Q 10 or 15 minutes?

18 A 10 or 15 minutes driving that curve.

19 Q And the road is kind of backed, isn't it?

20 A Yes.

21 Q It kind of backs back and forth?

22 A Yes.

44

44

vonBriesen

16 Q If you look at the last page of Exhibit 2 at the

17 bottom it has the number 226. Do you see that?

18 MR. SYRICO: (Indicating).

19 THE WITNESS: Yes.

20 Q Right at the top it says, Patient is a 48-year-old

21 male who presented to the ED via EMS after rolling

22 his semi-truck in an attempt to avoid hitting a car.

23 So were you trying to avoid the car when it rolled?

24 A No. There weren't any cars over there.

25 Q And it says, approximate speed, 40 miles per hour;

26 do you see that?

Page 61

45

45

vonBriesen

14 Q At the time that you rolled, were you possibly

15 traveling as fast as 60 miles an hour?

16 A No. I never drive 60 miles because that road is

17 all the time 50, 55.

18 Q You always just go 50 on it?

19 A No. I go 40, 45, 50.

20 Q You never go as --

21 A No --

22 Q -- fast as --

23 A -- 60 --

24 Q -- 50?

25 A -- 50, 55. I don't go 60.

46

46

vonBriesen

18 Q Yes. When you're driving on the off road of -- on

19 the off-ramp to Arsenal Road, did you ever when you

20 were working for Airtel there? It over 50 miles an

21 hour?

22 A No, I never.

23 Q You always went between 40 and 45?

24 A 40 and 45.

25 Q Because to go faster than that, would be dangerous?

Page 64

1 A Yes.

2 Q And you would risk rolling your truck?

3 A Yes.

4 Q And that's why you always kept the speed that low?

5 A Yes, sir.

47

47

vonBriesen

6 Q I'm going to show you what I have asked as

7 Exhibit 3. And I will tell you that Exhibit 3 is

8 a still shot from the video from your truck?

9 A Yes.

10 Q And you talked earlier about the sign that talked

11 about the possibility that a truck could roll over.

12 Do you remember that?

13 A Yes.

14 Q All right. Do you see the sign in the left-hand

15 side --

16 A Yes.

17 Q -- of Exhibit 3?

18 A Yes.

19 Q Is that the sign that you were talking about?

20 A Yes.

21 Q And that sign is on the off-ramp of I-55 southbound

22 on the way to Arsenal Road, correct?

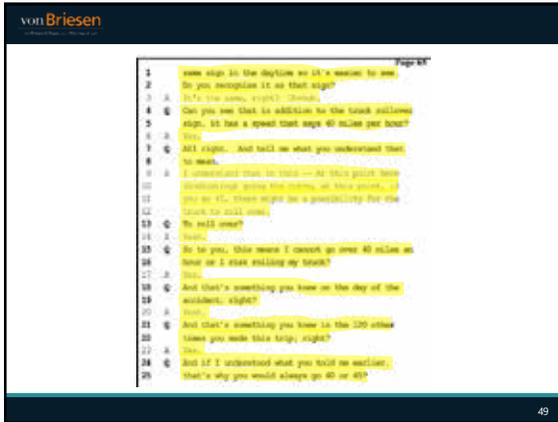
23 A Correct.

24 Q I'm going to show you what I have asked as

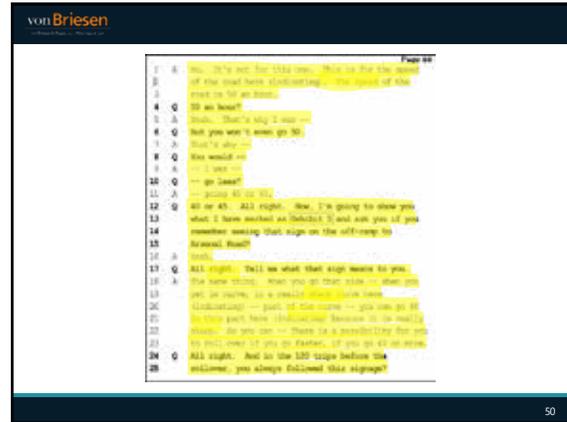
25 Exhibit 4, and I will tell you that this is that

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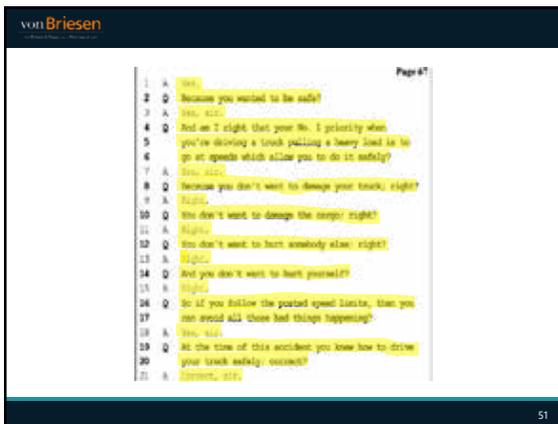
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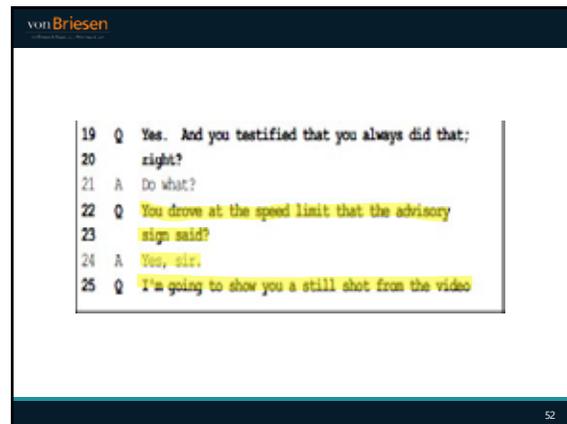
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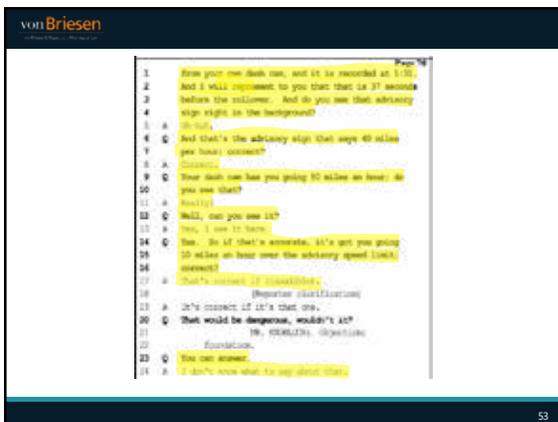
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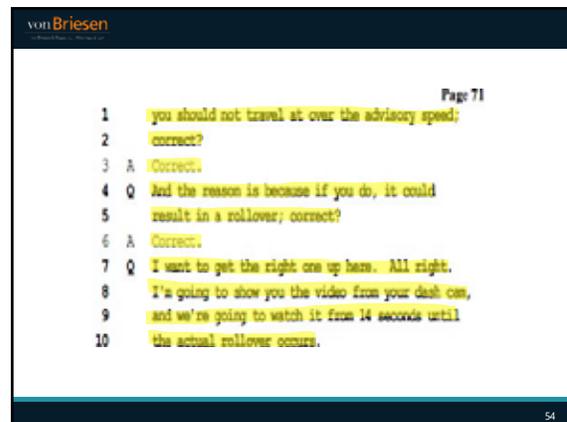
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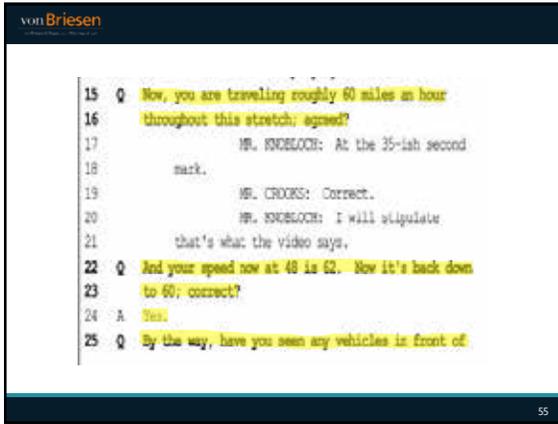
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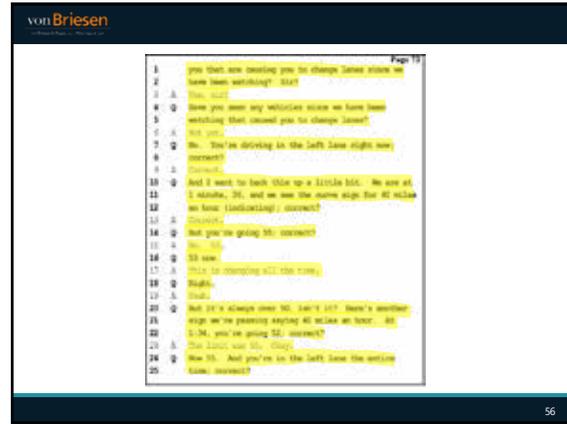
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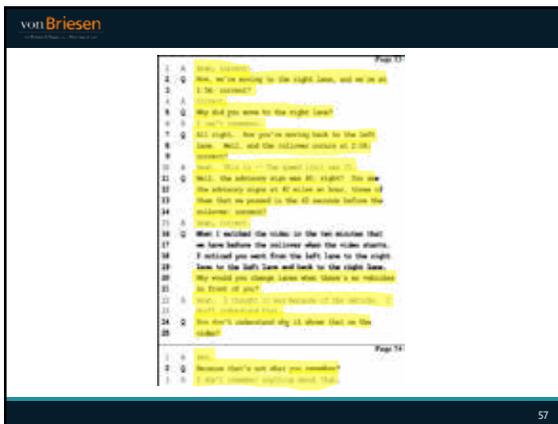
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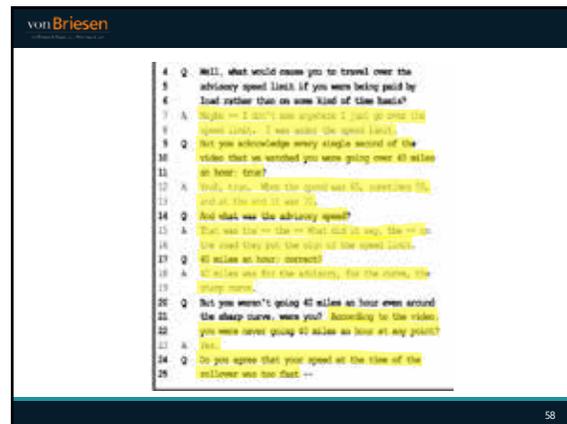
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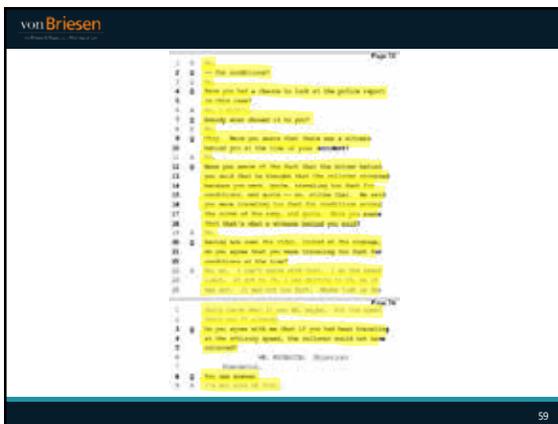
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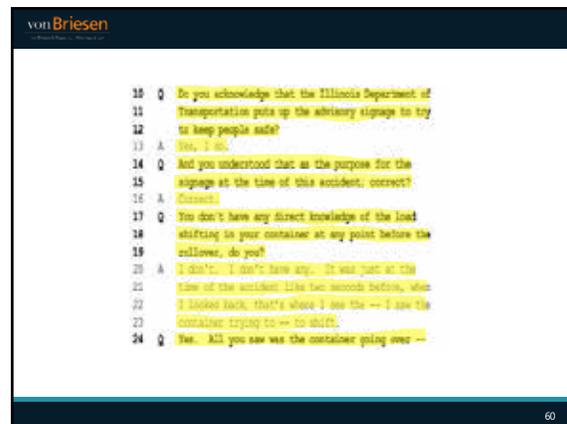
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vonBriesen

3 Q But you have no idea why the container went over?

4 A Fair?

5 Q Yeah. At that time I didn't have any idea.

61

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vonBriesen

4 Q But you told me earlier in the deposition that on

5 all the other 120 times that you went through there,

6 you followed the advisory speed, didn't you?

7 A Yes, or close to that per hour.

8 Q Yes. But on this occasion, you did not, true?

9 A That is not true.

10 Q Did you see at any point on the video that we just

11 watched, the two containers falling the accident, where

12 you were traveling at 40 miles an hour or less?

13 A Yeah, I saw at the accident -- then the accident

14 happened, I was out in about -- I'm not really

15 certain, so the trailer looked at that time real tall

16 and at that time I was driving 50 so I wasn't aware

17 into you that I -- because of the speed, because

18 I didn't go over the speed limit of the road.

19 Q But what you did see is at the time of the collision

20 you were going 50 miles an hour, right?

21 A Yeah, about 50 mph.

22 Q That was the legal speed limit for cars, right?

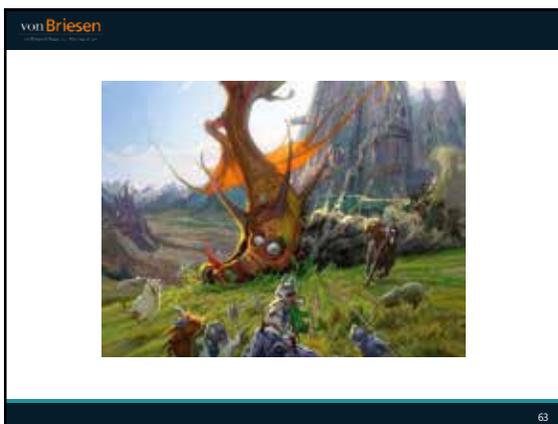
23 A Yeah.

24 Q Have you gone back to the scene of the accident to

25 try to figure out what happened?

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Consider Motions in Limine – Wis Stats. § 904.03

- Golden Rule statements and/or arguments
- References to insurance
- References to Defendant's purported wealth and relative non-wealth of plaintiff
- References designed to appeal to a prejudice against insurance companies or corporations
- Per Diem arguments/Mathematical formula for pain and suffering damages
- Reptile theory statements or arguments

1. Best practices, safe as possible – not the legal standard
2. Send a message to make this community safer
3. How important safety rules are in this community
4. Conscience of the community

- What is a human life worth
 1. Saving Mona Lisa versus child from fire at the Louvre
 2. Want Ads
- Presenting an award number to jurors in opening statement – not evidence

64

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Consider Motions in Limine – Wis Stats. § 904.03

- Presenting evidence in opening (i.e. playing excerpts of deposition testimony)
- Use of a scale to show # of witnesses for each side contrary to JI 215 (The weight of evidence does not depend on the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses)

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Consider Motions in Limine – Wis Stats. § 904.03

- Use of warning signs, prejudicial graphics

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Consider Motions in Limine – Wis Stats. § 904.03

- Request to see the Plaintiff's PPT beforehand if they are going to use one in opening
- Is this proper?

Damage	Past	Future
Loss of enjoyment of life	\$500,000	\$1,000,000
Physical Pain	\$1,500,000	\$3,000,000
Worry/Distress	\$1,200,000	\$2,400,000
Embarrassment/Humiliation	\$800,000	\$1,600,000
TOTAL	\$4,000,000	\$8,000,000

67

67

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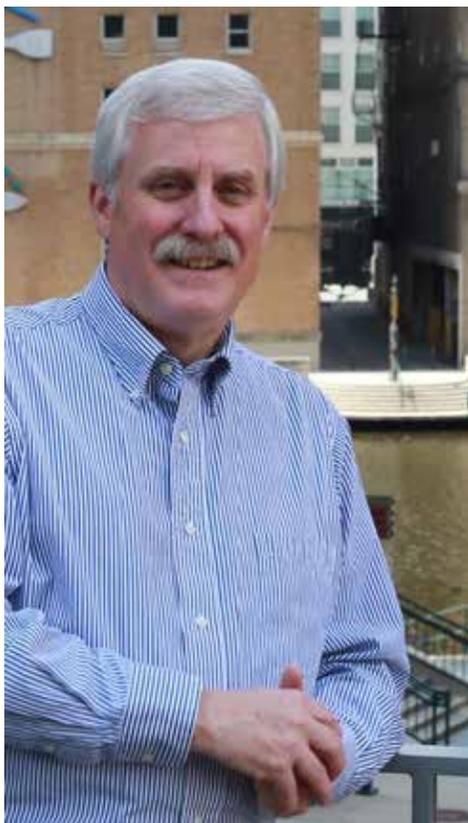
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Before mediating fulltime Jim litigated cases for 30 years, primarily defending clients in personal injury, property damage, product liability, environmental, construction and transportation lawsuits. His varied background also includes stints as a plaintiff personal injury attorney and in-house counsel for a major insurer. He is a past president of WDC.

MATHIE MEDIATION SERVICES LLC
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Milwaukee, WI 53202



**BELIEVE In Protecting Your Clients:
Ted Lasso's Tips For The Long Game Involving Minor Settlements**

Kristen S. Scheuerman
Weiss Law Office, S.C.

Heather L. Nelson
The Everson Law Firm

I. WHY DO WE CARE ABOUT MINOR SETTLEMENTS?

a. Minors cannot enter in legally binding contracts.

i. “We are aware that settlements are sometimes made in cases involving the claims of minors wherein releases are taken from the parent, but court approval is not sought. This practice is ordinarily found only in cases in which the injuries are modest and the settlement is correspondingly small. Since it is clear that a minor cannot be bound by an extra judicial settlement, a calculated risk is taken in striking a bargain without the benefit of judicial approval.” *In re Anderson*, 17 Wis. 2d 380, 382, 117 N.W.2d 360 (1962)

b. A settlement reached without the court's approval exposes your client to risk as the minor cannot be bound by the settlement upon reaching the age of majority.

II. STATUTORY AUTHORITY

a. Injury involving minors

i. Wis. Stat. § 807.10

(1) A compromise or settlement of an action or proceeding to which a minor or individual adjudicated incompetent is a party may be made by the guardian, if the guardian is represented by an attorney, or the guardian ad litem with the approval of the court in which such action or proceeding is pending.

(2) A cause of action in favor of or against a minor or individual adjudicated incompetent may, without the commencement of an action thereon, be settled by the guardian, if the guardian is represented by an attorney, with the approval of the court appointing the guardian, or by the guardian ad litem with the approval of any court of record. An order approving a settlement or

compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court.

(3) If the amount awarded to a minor or individual adjudicated incompetent by judgment or by an order of the court approving a compromise settlement of a claim or cause of action of the minor or individual does not exceed the amount specified under s. 867.03 (1g) (intro.), exclusive of interest and costs and disbursements, and if there is no guardian of the ward, the court may upon application by the guardian ad litem after judgment, or in the order approving settlement, fix and allow the expenses of the action, including attorney fees and fees of guardian ad litem, authorize the payment of the total recovery to the clerk of the court, authorize and direct the guardian ad litem upon the payment to satisfy and discharge the judgment, or to execute releases to the parties entitled thereto, and enter into a stipulation dismissing the action upon its merits. The order shall also direct the clerk upon the payment to pay the costs, disbursements, and expenses of the action and to dispose of the balance in a manner provided in s. 54.12 (1), as selected by the court. The fee for the clerk's services for handling, depositing, and disbursing funds under this subsection is prescribed in s. 814.61 (12) (a).

b. Wrongful Death

ii. Wis. Stat. § 885.04

(2) If the deceased leaves surviving a spouse or domestic partner under ch. 770 and minor children under 18 years of age with whose support the deceased was legally charged, the court before whom the action is pending, or if no action is pending, any court of record, in recognition of the duty and responsibility of a parent to support minor children, shall determine the amount, if any, to be set aside for the protection of such children after considering the age of such children, the amount involved, the capacity and integrity of the surviving spouse or surviving domestic partner, and any other facts or information it may have or receive, and such amount may be impressed by creation of an appropriate lien in favor of such children or otherwise protected as circumstances may warrant, but such amount shall not be in excess of 50 percent of the net amount received after deduction of costs of collection.

III. FILING A MINOR SETTLEMENT ACTION

a. Defer to your trusted GAL; filing process (and preference) differs from county-to-county.

b. Initial Pleadings (generally)

i. Petition to Appoint

ii. Consent to Act

iii. Order Approving Appointment

IV. GAL DUTIES

- a. Represent the best interests of the ward; a GAL is not personal counsel for a minor, however, if a GAL does their job well, they should advocate for the best interests of the minor.
- b. Investigate the facts of the case/loss;
 - i. Review the MVA report or incident report.
 - ii. Review all medical records and billing records.
 - iii. Identify any and all subrogated interests/liens.
 - iv. Identify any unpaid patient balances; document any out-of-pocket bills or expenses.
 - v. Review photographs or obtain them if necessary (especially important in cases involving scarring).
 - vi. If there was an allocation of limits amongst multiple claimants, ensure you have enough information about that carrier's allocation process and determination to determine if the allocation is fair, reasonable, and in the best interest of your ward.
 - vii. Meet with the ward's parents and depending on the age of the ward, the ward as well.
- c. Help develop an investment plan to secure the minor's funds;
 - i. **WARNING:** it is a very poor idea to give funds to a minor directly, and it is an even worse idea to give a minor's funds to their parents.
 - ii. Understand the investment options available depending on the size of the settlement (for example, you need at least \$10,000 to fund a structured settlement).

iii. Make a thoughtful decision after discussing available options with the ward's parents, and the ward depending on their age.

1. Investment vehicles and their appropriateness will differ depending on the facts of a case and the family/minor involved. Some options include:

a. Restricted savings account (this can be with or without any withdrawals prior to age 18);

i. Note: it is a best practice if you are serving as GAL to communicate directly with the legal department at any bank the family wants to work with to ensure *before* you get an Order from the court that the specific bank involved will honor any language included in an Order placing any type of restriction on an account.

b. CD;

c. Market investment;

d. Structured settlement.

2. Determine when funds will be paid out to the minor.

a. This is another aspect that will differ from court-to-court; because the funds are the funds of the minor, some courts are reticent to allow funds to be restricted past the age of 18. There are other courts, however, who appreciate an

- investment vehicle that attempts to protect a minor from coming in to a large sum of money as a very young adult.
- b. Use an experienced and trusted GAL who will understand the nuances of the local jurisdiction.
 - c. The GAL should not make this decision in a vacuum and should consider the feedback of the parents or guardian but ultimately, the GAL must make a recommendation that they believe is in the ward's best interest.
3. Once the GAL's comprehensive investigation is completed, the GAL should draft and file a Petition for Approval of Minor Settlement, along with a Proposed Order Approving Minor Settlement.
- a. If the case involved the tender of limits, consider asking the court to approve the settlement "on paper" (meaning based on filings only; this saves time and cost for all of the parties involved).
 - b. Ensure the GAL understands the court's preference for a hearing, if one is to be had; will the parents need to testify? Will the ward be required to participate and if so, will he or she have to testify? Will the court accommodate the parties' by allowing a virtual hearing? The family and the ward should be prepared for this in advance of a hearing to avoid any unexpected testimony or hiccups.

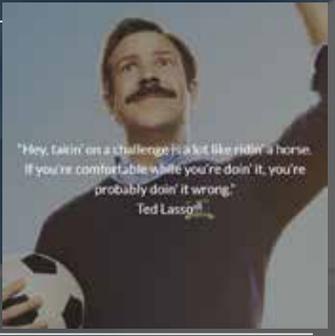
- c. Consider whether a Motion to Seal is necessary; some counties enter minor settlement matters in a way they are not “searchable” on CCAP (we cannot explain the rhyme or reason for this). However, if you are going to file medical records and bills (which is likely necessary to substantiate for the Judge that you thoroughly investigated the claim), it will likely be in your ward’s best interest to have those specific records sealed.

BELIEVE In Protecting Your Clients:
Ted Lasso's Tips For The Long Game Involving Minor Settlements

Kristen S. Scheuerman
WRISK LAW OFFICE
Heather L. Nelson
Evenson Law Firm

1

Are we approaching minor settlements in the best interest of our clients?



"Hey, takin' on a challenge is a lot like ridin' a horse. If you're comfortable while you're doin' it, you're probably doin' it wrong."
Ted Lasso

2

Hire a strong GAL



Hey, doin' the right thing is never the wrong thing. Yeah.

3

GAL's Duties:

- Best interests of the ward
- Evaluate settlement
- Communicate with family
- Understand facts and context
- Report to parties
- Investment decisions
- Order records and reports
- Undertake lien negotiation
- Secure court approval



BE CURIOUS, NOT JUDGMENTAL

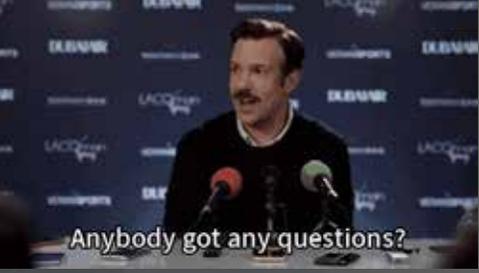
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HUMAN BEINGS ARE NEVER GONNA BE PERFECT. THE BEST WE CAN DO IS TO KEEP ASKING FOR HELP AND ACCEPTING IT WHEN YOU CAN. AND IF YOU KEEP ON DOING THAT, YOU'LL ALWAYS BE MOVING TOWARDS BETTER.

THE GOAL IS NOT FOR THE "BEST" END RESULT; BUT A RESULT THAT IS FAIR, REASONABLE, AND THOUGHTFUL.

5



Anybody got any questions?

6

BMR

BELL MOORE & RICHTER SC



William A. Abbott



William D. Bolte



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David G. Ress



Morgan K. Stippel



Sheila M. Sullivan



William C. Williams

Bell, Moore & Richter, S.C. has been involved in insurance defense litigation for most of its existence. Due to the firm's extensive experience with all aspects of insurance litigation, we are often called on to defend insurance companies and their insureds in the courtroom and in appeals, both in state and federal court. Our attorneys pride themselves on keeping up to date on the latest changes in insurance law and can help clients untangle the constant legislative and case law changes in insurance. For decades, our attorneys have also successfully defended medical professionals practicing in a broad range of specialties and a wide variety of claims. We know how to build a strong defense to workers' compensation claims and disputes and help employers on all issues which may arise. Our experience has led to successful results in defending claims both in State and Federal courts as well as before the State Medical Examining Board and Medical Mediation Panel. In the defense of business litigation, we bring the experience and judgment of seasoned practitioners from both business and transactional attorneys, on the one hand, and proven civil litigation practitioners on the other. We also have considerable experience helping to defend insurance agents as well as real estate agents and brokers in litigation. Let us help you.

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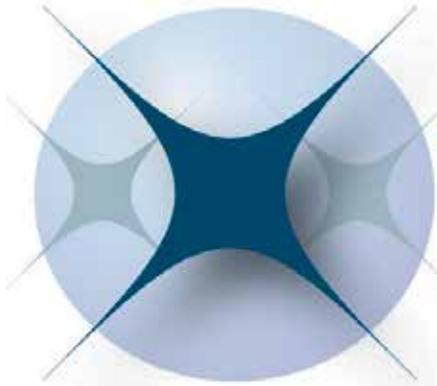
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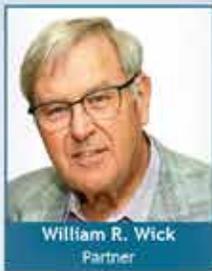
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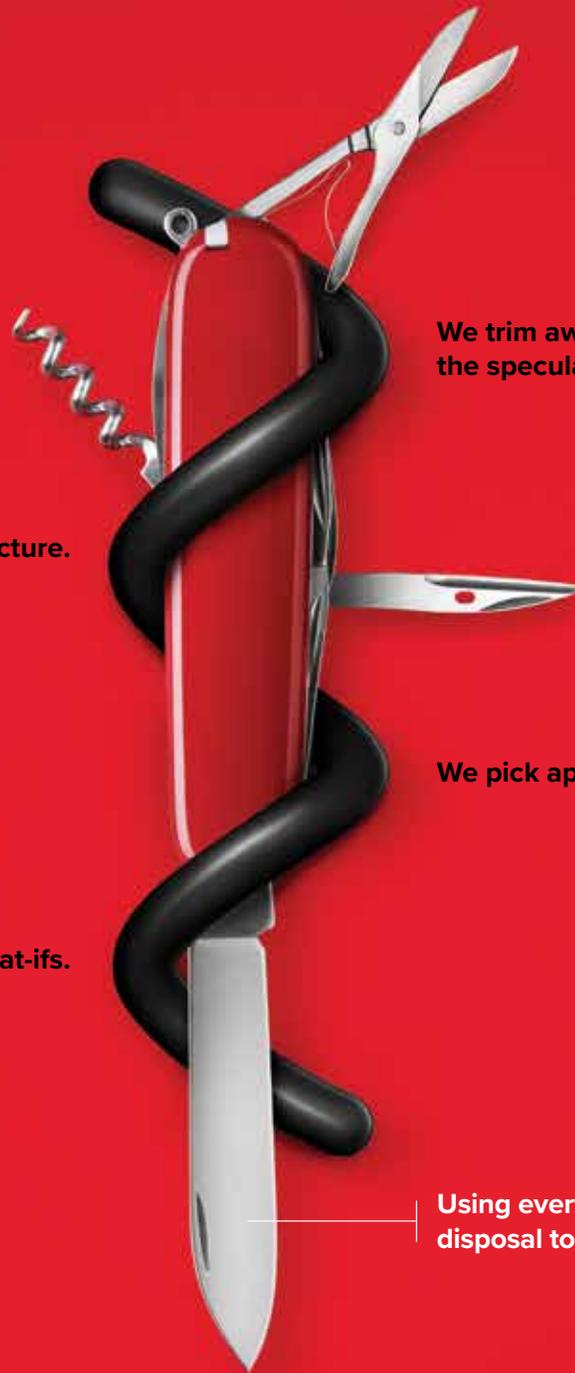
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