Navigating Mass Settlements With GenAI

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March 28, 2025

Introduction

With the rapid development of artificial intelligence, new opportunities for managing and resolving mass claims litigation—whether it be based on products liability, environmental torts or employment claims—are emerging. These litigations present numerous factual, legal, and logistical challenges, including the extensive data they generate about the claimants and their claims. That data has always been replete with insights to be harnessed. Generative AI (or GenAI) now offers the prospect of harvesting those insights efficiently and effectively, while offering ways to better manage and resolve the claims. In this article, we discuss how AI can assist with the management of mass claims based on our experiences in developing and using AI-powered solutions at our firm. In a subsequent piece, we will focus on how GenAI can generate approaches for resolution.

Approaching the Mass Claims Challenge

Imagine you represent Acme Corp., and thousands of liver cancer victims blame Acme's newest detergent for their illnesses. A recent publication reported on an observational epidemiological study that found an association between liver cancer and exposure to the detergent for over six months in women 40 years or older. Based on that study, Acme added a warning to its bottles of detergent. Thousands of claims followed. Cases were consolidated for discovery. Then came the short-form complaints, plaintiff fact sheets, medical records and other documents as well as

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additional discovery. This treasure trove of information/data now resides in your document management system. Acme is in the middle of a significant transaction and wants prompt guidance on how to proceed with the litigation. What to do?

Like with most mass claims, you and your client want to understand what exposure you are confronting. This begins with differentiating claims; separating the stronger from the weaker. GenAI doesn't change that imperative. It just may make doing so more feasible.

Consider these factors:

- *Who has a cognizable claim?* Weed out bogus or weak claims that have no link to the product or no real harm. Who was exposed to the product for at least six months or at all? Who was over forty at the time of exposure?

- *What makes a claim worth more or less?* Claims that arose before the warning was added to the detergent's labeling will pose more risk of exposure than those after. Injury severity also matters, and so do other factors. How long after exposure did the plaintiff become sick? How long will the plaintiff live and need care? Are there other factors that could cause the harm?

- *What else might impact the value of the case if it goes to trial?* Who is on the other side? A savvy mass tort lawyer with deep pockets and a track record of big wins may pose more risk for Acme than would an inexperienced lawyer with little track record. Where will the case be tried? Some jurisdictions pose more risk for large verdicts than others depending on the judge, the juries, local specific laws, and evidentiary rulings.

- *What is the best pathway forward?* Based on these factors and the status of the litigation, it now may become clearer which cases to try, which cases to resolve, and which steps are necessary to unlock the potential for resolution—including motions practice, key additional discovery, and bellwether cases to be tried. You also may want to use this information to begin outlining a matrix that can assign values to be negotiated for resolution.

How GenAI Can Help

Before GenAI, traditional methods for analyzing the data collected in mass claims litigation—like manual reviews, keyword searches, or statistical sampling—could be slow, costly, incomplete, or inaccurate. We have found GenAI to unlock new opportunities for evaluating and understanding this type of litigation. Indeed, it can power tools that ingest data from various sources and extract and normalize curated information relevant to case management. This is not just cutting and pasting from the complaints, fact sheets, or medical records. It's synthesizing information from different parts of those documents and organizing the data for better assessment. The result

is a near real-time leveraging of insights that the data can provide.

Large language models, natural language processing, and advanced document processing can help mass claims lawyers:

- **Find Needles in Haystacks:** Quickly read and sort large sets of medical records, spotting diagnoses, treatments, and prognoses, flagging key findings and patterns.

- **Show the Big Picture:** Turn data into dashboards, charts, or graphs to compare different groups or categories of claimants and uncover insights or anomalies.

- **Group, Grade, and Rank Cases:** Aggregate and provide qualitative assessments and benchmark cases within a firm's portfolio and across the entire litigation.

- **Explore Information at Scale**: Sift through documents from thousands of claimants, covering millions of pages, at a speed and quality otherwise requiring armies of reviewers.

With GenAI at your disposal, Acme's request that you quickly and accurately assess the docket of claims now becomes far more realistic. You can promptly determine which claimants had exposure that was shorter or longer than six months, which claims arose before the warnings were added versus after, and which claims are in particular jurisdictions, along with the different judges and lawyers in each one.

Potential Pitfalls of Using GenAI to Manage Mass Claims

Hallucination and Errors. GenAI is not a panacea. There will be errors. It still requires a "human in the loop" to help identify and address anomalies. Both verification and validation are critically important. Given the scale of mass claims data, human verification of every result would defeat the efficiency purposes AI tools seek to offer. That is why it is important to determine if the AI tools themselves can help validate at scale by using multiple methods to check on one another. We have found the way results are validated makes all the difference. Your analysis and strategy will only be as good as the data you

have. Just like with human-powered data collection, there will still be mistakes that the lawyer will need to backstop, and GenAI can help limit those mistakes and help focus that backstop on the most critical pieces of information.

Data Management. Using medical records and sensitive personal information raises significant privacy risks, which mass claims magnify because they involve so many potential plaintiffs. Threat actors could steal and expose the data you've collected unless it is well-guarded. Even putting aside the risk of hacking, it is also important that safeguards and automated guardrails exist to respect intellectual property and confidentiality concerns that arise from using the dataset. With the pace of change in the GenAI space, we have found that it's even more important to identify systems and partners that account for and incorporate the additional challenges of legal data management.

Ethical Considerations. GenAI is trained on human-generated data, which may include biases. Depending upon the particular use cases for the AI, it is worth being on the alert and testing for biases (race, gender, class) that may taint the way information is extracted and synthesized.

Best Practices for Using GenAI to Manage Mass Claims

Trust and verify. To develop trust in the outputs, you must be able to measure and explain the results, using the right methods and metrics for each task and domain. As noted above, it is also important to show how results are being verified—through the technology and through human spot-checking. Use GenAI responsibly to augment human capabilities, rather than replace them. (Think "cyborg" not "robot"). In addition, question and cross-check any strange or incomplete outputs generated by GenAI and avoid systemic issues by stacking independent GenAI technologies. If GenAI is to generate a structured database, for example, comparing it to objective criteria will be important to ensure its accuracy.

These approaches will also help ameliorate the ethical concerns raised above.

Collect the right data. Use both AI and traditional tools and techniques that can cope with the dataset's size and diversity, as well as spot and fix the glitches and gaps. That requires using standards and protocols that can ensure the data is in good shape, like using metadata, schemas and ontologies that ensure consistency across the set. As mentioned above, large language models make errors, and pairing traditional software approaches with LLMs helps prevent those errors. And pairing subject matter experts with the AI tools also ensures that any nuances in the source documents are properly reflected in the data.

Protect and manage data properly. Implement policies and practices to secure data and respect privacy rights. Use technologies like encryption, authentication, and authorization to guard data at every stage, and ensure contracts and agreements with vendors clearly define their duties to do the same. Identify and monitor where your data is stored and how it moves through vendor systems. Also ensure that your data management policies protect intellectual property and other confidentiality concerns that could lurk within the set, all while using the most effective technologies for the task.

Conclusion

GenAI's capabilities unlock entirely new possibilities for managing and resolving mass claims. Like with all AI solutions, they must be managed properly and wisely. Doing so will enable new strategies for addressing mass claims while also returning tremendous value.

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