

# Claims Judicial and Legislative Affairs Quarterly Digest

March 2026





Recognizing that today's economic and litigation environments are top of mind for our customers, Zurich has devoted a team of subject matter professionals to address their concerns. The Claims Judicial and Legislative Affairs (CJLA) group studies social inflation and its drivers, providing insights and information to Zurich's customers and brokers; our claims and risk engineering teams; and others who may influence our industry and the legislative environment. As a founding member and instrumental leader amongst a growing coalition of industry partners, we are proud to share this information in our *Quarterly Digest* and *Regional Recap*."



**Keith Daly**  
ZNA Chief Claims Officer

Social inflation is increasingly responsible for rising claims costs. This may affect how companies do business, interact with their communities, and connect with their customers. Zurich remains dedicated to working collaboratively with our customers, brokers, and risk mitigation industry members to tackle these challenges.

The **CJLA Quarterly Digest** highlights issues which touch the industry on a global, national, and state level. Trending topics as well as successful trial tactics are also shared. The articles contain direct links for more in-depth information. The **CJLA Quarterly Digest** publishes once a quarter.

The **CJLA Regional Recap** captures the latest legislative enactments and judicial decisions that impact social inflation and the insurance industry. For ease of use, these are indexed by region and by state with direct links to the exact legislation or citation. The **CJLA Regional Recap** publishes four times a year.

Education is only the beginning of the solution. Leveling the playing field requires that all be involved.

To join Zurich in combatting social inflation – or for questions or submission of topics for future issues – please contact [lisa.bellino@zurichna.com](mailto:lisa.bellino@zurichna.com)

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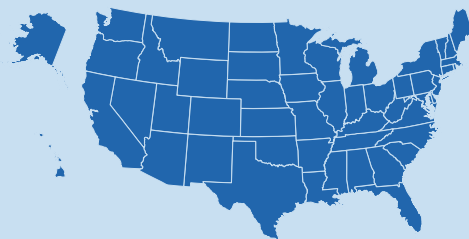
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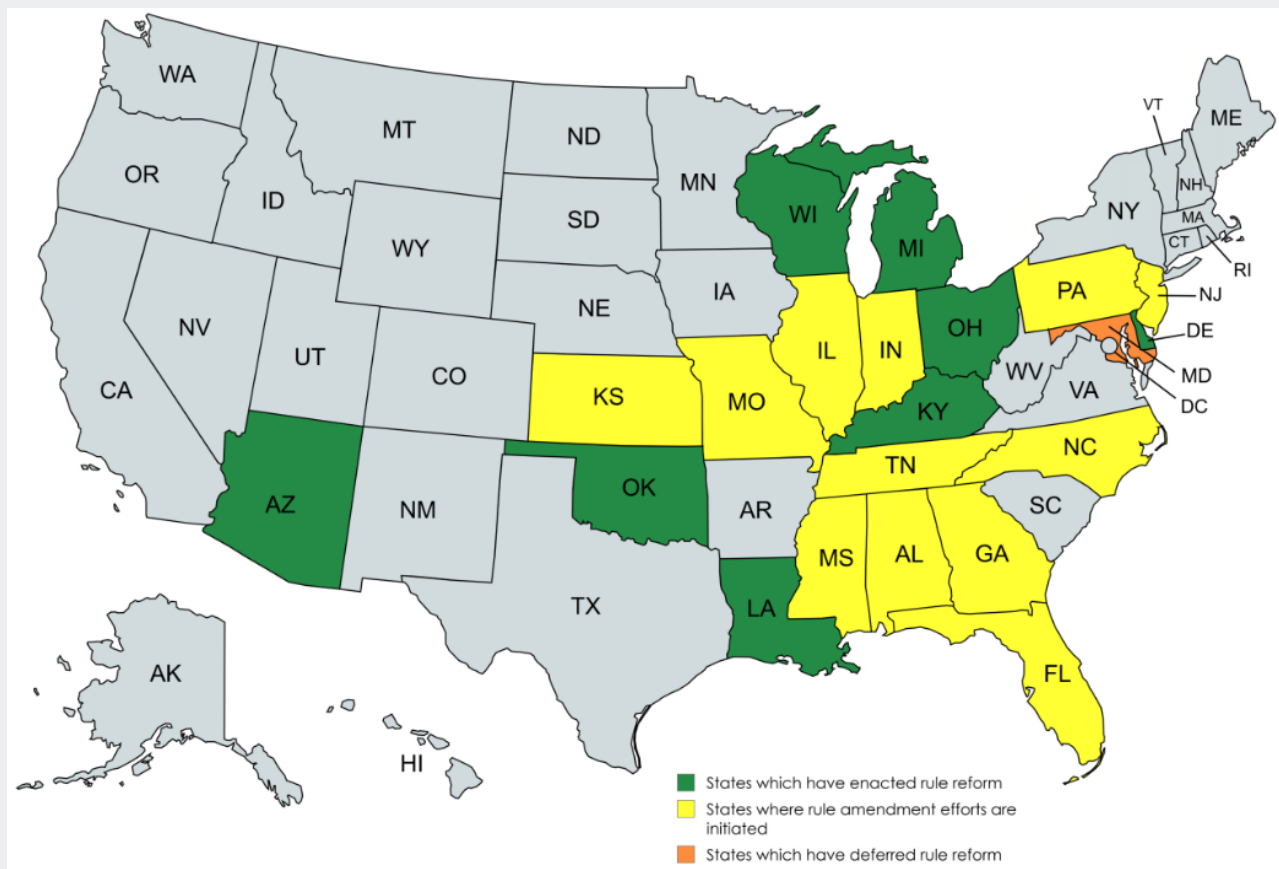
# National news



## The expanding reach of FRE 702: *How states are reshaping expert evidence rules*

On December 1, 2023, the amendments to [Federal Rule of Evidence 702](#) (“FRE 702”) took effect. FRE 702 provides a structured rule specifying certain requirements with respect to the admissibility of expert testimony: 1) the expert’s knowledge must assist the factfinder; 2) testimony must be based on sufficient facts or data; 3) testimony must be the product of reliable principles or methods; and 4) the expert must reliably apply those methods to the facts. As a reminder, the amendments also clarified and emphasized the preponderance standard that applies to the reliability-based requirement of FRE 702. The Committee Notes on the 2023 amendments to FRE 702 address that the reason for the clarification was that courts were misapplying the standard set forth under FRE 702 warranting the need for amendments.

FRE 702 provides a structured rule with clear requirements as to the court’s gatekeeping function. Additionally, it sets forth that the proponent of the expert testimony must carry the burden. This clear and specific method has encouraged many states to move toward rule reform in alignment with the FRE 702. The mechanism for enacting such a change can differ by state. Some states must effectuate a change through the judiciary and others through legislative action. Efforts are being made by local and national reform groups to encourage adoption of FRE 702 at the state level as shown in the below [map](#). In 2025, Oklahoma adopted FRE 702’s standards ([HB 2628](#)). In 2026, both Kansas ([SB 398](#)) and Wisconsin ([SB 459](#)) moved to adopt FRE 702.



The amendments also clarified the court's gatekeeping function, noting that the court's gatekeeping function does not conclude upon a determination of admissibility. FRE 702 applies to those cases pending in federal courts. State expert admissibility standards may differ; however, since the adoption of the amended FRE 702, many states are reforming their expert admissibility standards to align with FRE 702. States that currently do not align with FRE 702, adhere to criteria developed through case law set forth in [Frye v. United States](#) or [Daubert v. Merrell Dow Pharmaceuticals](#) or a hybrid standard.

States that follow [Frye v. United States](#) adhere to what is often described as the "general acceptance" test. Under *Frye*, expert scientific evidence is admissible only if the underlying methodology or scientific principle is generally accepted in the relevant scientific community. The standard looks to the scientific field (not the court) to determine whether a technique has gained sufficient recognition and consensus to be considered reliable. Once a court finds a technique is "generally accepted," admissibility is typically not revisited in future cases. Also, under *Frye* the judges evaluate whether a methodology is accepted but they do not deeply assess issues like error rates, peer review, or how reliably the expert applied the methodology (which are factors emphasized under the *Daubert* standard). An example of states following the *Frye* standard include California, New York, Illinois, and Pennsylvania. The minority of jurisdictions follow the *Frye* standard.

Other states follow [Daubert v. Merrell Dow Pharmaceuticals](#). This expert admissibility standard already emphasizes judicial gatekeeping and methodology and is somewhat consistent with amended FRE 702. Under *Daubert*, the trial judge, not the scientific community, is the gatekeeper responsible for ensuring that expert testimony rests on reliable methods and is reliably applied to the facts. These factors, while not required or mandatory, usually guide the judge's gatekeeping inquiry: (i) is the theory capable of being tested; (ii) has the methodology been described in peer-reviewed literature; (iii) are the error rates known and are there standards controlling the technique's operation; (iv) does the method adhere to established methodological standards; (v) is the method accepted within a professional community; and (vi) the expert must reliably apply the methodology to the case facts. Unlike FRE 702, the *Daubert* standard does not expressly state the proponent's burden of proof. Some states that follow the *Daubert* standard include Arizona, Connecticut, Indiana, and Missouri.

Other states do not follow a pure *Frye* or *Daubert* standard but rather apply a mixed or hybrid framework. For example, Minnesota follows a *Frye-Mack* + FRE 702 standard – using the *Frye-Mack* analysis for novel scientific evidence and applying FRE 702's reliability requirements.

As 2026 unfolds, even more states may examine their expert admissibility standards and adopt the FRE 702 standard.

By: [Rebecca Fozo](#), Zurich CJLA

## Focus on consumer affordability: *Legislation takes aim at fraud and litigation funding*

The conclusion of the New York 2025 legislative session and start of the 2026 session brought some anticipated as well as unexpected outcomes.

### **2026 Outlook: What's to Come?**

Governor Hochul's 2026 State of the State was based on a theme of affordability. She [acknowledged](#) that New Yorkers pay the highest auto insurance rates in the nation due to rampant fraud and runaway litigation costs. The Governor [stated](#), "we're putting the brakes on fraud and ending a system that rewards illegal behavior." An emphasis on a state-wide initiative to combat staged accidents was a highlight. In 2023, there were [1,729 staged crashes](#) in New York State, the second-highest in the nation. According to the New York State Department of Financial Services (DFS) Insurance Frauds Bureau, insurance carriers reported [38,270 incidents](#) of suspected motor vehicle insurance fraud. This is an increase from [24,238 incidents](#) of suspected motor vehicle insurance fraud in 2020 – showing an increasing trend in the three years.

The Governor's [2026 Agenda, as set forth in her Executive Budget](#), include several provisions that attempt to "put the brakes on fraud."

Currently, insurers have thirty (30) days to investigate potentially fraudulent claims. The [Governor proposes](#) increasing the timeframe insurers have to report fraud and give insurers more time to investigate and avoid paying fraudulent claims.

Under the current law, individuals committing crimes, such as those convicted of driving while impaired or committing or fleeing a felony, are permitted to recover sizeable awards for pain and suffering and emotional distress damages. The [Governor proposes](#) a cap to limit the award of non-economic damages for drivers engaging in criminal behavior at the time of the accident.

The Governor has included policy to change the rules on recovery for those drivers at fault. New York currently allows drivers who are "mostly" at fault in an accident to collect damages, including non-economic damages. The [Governor seeks](#) to limit the non-economic damages a driver who is mostly at fault may recover.

Further, under New York's no-fault insurance law, the threshold for a "serious injury" is vague, which may allow for injured individuals to make claims for compensation stretching beyond reimbursement for medical expenses or lost wages associated with the injury. The [Governor plans](#) to clarify the criteria for the "serious injury" threshold.

Among those organizations supporting Governor Hochul's 2026 initiatives is the Lawsuit Reform Alliance of New York ("LRANY"). LRANY has begun a media campaign to support and amplify the Governor's message via a website [KeepNewYorkAffordable](#) which provides resources, sets forth facts and figures on fraud plaguing New Yorkers, and provides a way to send a message to New York legislators in support of the Governor's efforts.

### **The 2025 Legislative Session Wrap Up**

The 2025 legislative session concluded with Governor Hochul completing action on nearly all of the [856](#) bills presented to her. While this article does not capture every bill, it highlights the Governor's actions on several key pieces of impactful legislation, such as her veto of a fourth attempt to expand wrongful death liability. The Governor signed other notable bills, such as regulation of third-party consumer litigation financing.

- [Vetoed Legislation:](#)

## **Grieving Families Act: [SB4423/A6063](#)**

For the fourth consecutive year, legislation aiming to allow damages for emotional distress and expand the class of eligible family members made it to Governor Hochul's desk. New York's Wrongful Death Statute limits recovery to pecuniary loss for damages such as lost wages, lost support and funeral expenses. The proposed legislation would have overhauled wrongful death claims. On December 5, 2025, the Governor vetoed the proposed legislation for the fourth time.

In her [2025 veto memo](#), the Governor cited that the proposed changes to the law failed to address the consequences it would present for the insurance industry, consumers and small businesses in New York. The Governor stated, "For the fourth year in a row, the Legislature has passed a bill that continues to pose significant risks to consumers, without many of the changes I expressed openness to in previous communications." She added that New York is facing an affordability crisis and that the bill may lead to increased costs, including increased insurance premiums and financial stress to the healthcare systems. As with prior versions of the bill, the Assembly and Senate did not address the question of increased costs.

## **General Consent Jurisdiction: [A8303/SB8186A](#)**

This session also saw an attempt to expand a business' potential liability by allowing a company who simply registers to do business in New York to be sued in New York – even if the dispute has no connection to the state.

Governor Hochul vetoed substantially similar legislation from 2023 and 2021. In her [veto memo](#) this year, she states that "the proposal would likely deter out-of-state companies from doing business in New York by subjecting them to lawsuits in the State regardless of any connection to New York." The revisions made to prior iterations and set forth in this bill did not satisfy the Governor's concerns. She indicated that the passage of A8303 would "cause undue uncertainty for business in an already volatile climate" and "invites additional burdens on the state's court system at a time of strained judicial resources."

- [Enacted Legislation](#)

## **Consumer Litigation Funding Act: [A804C/S1104](#)**

On December 22, 2025, Governor Hochul signed the Consumer Litigation Funding Act into law and thereafter enacted a Chapter Amendment ([AB9442](#)). The new law sets forth a comprehensive framework that regulates consumer legal funding activities and will take effect 180 days after signature (or Spring 2026). The statute sets forth certain mandatory contract requirements that must be present in agreements with consumers such as including a 10 business-day right of rescission, setting forth cumulative amounts due if multiple contracts exist and capping aggregate charges at the funded amount plus 25% of the legal claim's gross proceeds.

Concerns over the amount of influence the funding company has over the funded litigation is addressed in the statute. The law sets forth prohibitions such as funding companies may not refer consumers to specific attorneys or medical providers, pay legal fees or court costs using transaction funds, or influence settlement decisions and legal strategy.

While the law provides that litigation funding companies must register with the Department of Financial Services (DFS) before operating, the law does not require disclosure of the financing agreement nor does it address commercial funding or foreign funding.

## **Fostering Affordability and Integrity through Reasonable Business Practices Act (FAIR Act): [SB8416/A8427](#)**

The FAIR Act expands the scope of the state's authority to challenge unfair and abusive business practices in the state. The FAIR Act, backed by New York Attorney General Letitia James, amends [New York's General Business Law §349](#) and broadens the scope of what may be an unlawful business practice. Previously, New York's consumer protection statute banned deceptive acts. Under the FAIR Act, the scope is expanded to include "unfair" and "abusive" practices – even when there is no deception alleged.

Under the new law, an “[unfair](#)” act is defined as “when it causes or is likely to cause substantial injury which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition.” An “[abusive](#)” practice is “when: (I) it materially interferes with the ability of a person to understand a term or condition of a product or service; or (II) takes unreasonable advantage of: (A) a lack of understanding on the part of a person of the material risks, costs or conditions of a product or service; (b) the inability of a person to protect such person’s interest in selecting or using a product or service; or (C) the reasonable reliance by a person on a person engaging in the act or practice to act in the relying person’s interests.”

Recently, the Governor signed SB811, a chapter amendment to the FAIR Act, which changes the original provision that the Attorney General may bring an unfair or abusive business misconduct claim, by qualifying such claim must be based solely on conduct which is consumer-oriented. It does not create a private cause of action.

### **Avoiding Vexatious Overuse of Impleading to Delay (AVOID Act)/[SB8071A/A9502](#):**

The [AVOID Act](#), effective April 18, 2026, imposes strict time limits for filing third-party complaints in New York civil cases. The [purpose](#) of the Act, is to promote efficiency and prevent the defense from deliberately postponing the impleading of third-parties to delay litigation and ensure the timely resolution of disputes. The Act originally set forth a strict cascading timeline for various rounds of impleading third parties that became increasingly tighter with each additional third-party added; however, those provisions and several other terms in the original Act were modified by a Chapter amendment which was then signed by the Governor. [SB 8809](#) states that a defendant shall not file a third-party summons or complaint more than 90 days after serving an answer, unless provided otherwise by court order. Further, third-party complaints may not be filed unless they are based upon good cause. Actions filed in violation of the rules can be severed or dismissed without prejudice.

The AVOID Act presents challenges for defense counsel, in particular those handling construction injury cases. Prior to enactment of the AVOID Act, the defense would gather contracts, accident reports and statements before determining whether and who to implead. The Courts exercised discretion and could grant extension of time where appropriate and sever claims if needed.

By: [Rebecca Fozo](#), Zurich CJLA

## Rolling over a \$1 billion verdict: *The trial court must charge on applicable law*

On December 22, 2025, a three-judge panel of the Pennsylvania Superior Court unanimously [vacated](#) a highly publicized \$1 billion jury verdict against a car manufacturer, remanding the case for a new trial. The case stemmed from a rollover incident in a suburban county which occurred when Plaintiff, driving a 25-year-old vehicle, attempted to pass another car on the left by moving into the opposing lane of traffic. After finding that lane occupied and attempting to regain the northbound lane, Plaintiff lost control causing the vehicle to leave the roadway, strike several trees and roll over. During the rollover sequence, plaintiff, who was belted, struck his head on the roof fracturing his cervical spine, paralyzing him from the neck down. The damage is depicted in the photographs.



Plaintiffs commenced a products liability action in Philadelphia against the manufacturer and the dealership which sold the vehicle. Plaintiffs did not claim that a design defect within the vehicle caused the accident, rather, they alleged the vehicle was defective because of the way the occupant restraint system operated during the rollover. Specifically, they claimed the vehicle was defective because the roof was too low and the seat belt incorporated a “rip-stitch” design, allowing the belt to extend during collisions to better manage the forces of impact.

A “rip-stitch” or “energy management loop” is a section of the seat belt webbing which is folded, stitched together, and designed to tear during a significant collision. The ripping belt adds several inches of slack as the accident scenario unfolds thus reducing deceleration forces on the occupant. As such, a “rip-stitch” seat belt is a designed safety feature intended

to reduce injuries caused by severe deceleration forces. Nevertheless, with regard to the plaintiff's vehicle, they claimed the "rip-stitch" seat belt allowed the driver to travel an additional four inches during the rollover, which, in conjunction with a low roof that afforded him only three inches of head clearance, caused his head to contact the vehicle roof breaking his neck. Thus, Plaintiffs contended the combination of the "rip-stitch" design of the seat belt and low roof rendered the vehicle "[unreasonably dangerous](#)" and but for said defects the driver would not have emerged from the accident a quadriplegic. As such, Plaintiffs' claims fell within a subset of product liability cases known as "crashworthiness" cases.

The [crashworthiness doctrine](#) provides that a manufacturer/seller of a product is liable in "situations in which the defect did not cause the accident or initial impact, but increased the severity of the injury over that which would have occurred absent the design defect." Regarding automobiles, the term crashworthiness means the protection that a vehicle affords an occupant against personal injury or death resulting from a motor vehicle accident. The "crashworthiness doctrine imposes on a plaintiff more rigorous proof requirements than a typical Section 402A claim. Under the crashworthiness doctrine a plaintiff must [prove](#) (1) that the design of the vehicle was defective and that when the design was made, an alternative, safer design practicable under the circumstances existed; (2) what injuries, if any, would have resulted to the plaintiff had the alternative, safer design, in fact, been used; and (3) some method of establishing the extent of plaintiff's enhanced injuries attributable to the defective design. This is because under the crashworthiness doctrine, the law adopts a [trade-off](#) that calls upon plaintiff to shoulder a heightened burden of proof in exchange for expanding the scope of strict liability to defects that did not cause the underlying accident.

Throughout their case and during trial, Plaintiffs consistently asserted that the alleged defects of the vehicle did not cause the accident, but rather that combination of the rip-stitch seat belt and low roof enhanced plaintiff's injuries, specifically, the broken neck. Plaintiffs presented numerous expert witnesses in that regard, and the manufacturer presented contrary expert testimony.

During the charging conference at trial, the defense requested specific jury instructions on the burden of proof for the crashworthiness doctrine, the elements of crashworthiness doctrine, and the doctrine's requirements regarding proof of a safer alternative design, as that was how the case was tried. In response, the trial judge expressed hesitancy to allow any charges save for those contained in the Pennsylvania Suggested Standard Civil Jury Instructions, unless counsel agreed to the non-standard charge. The manufacturer noted that the Pennsylvania Suggested Standard Civil Jury Instructions lacked a charge on crashworthiness. Despite this, the trial court [declined](#) giving any non-standard charge instead deciding to give the jury only the standard charges for strict liability cases, which did not include many of the crashworthiness elements.

On October 30, 2023, the jury found for Plaintiffs and [awarded](#) \$156,488,384.01 in compensatory damages and \$800,000,000.00 in punitive damages, which with delay damages resulted in a total verdict of over \$1 billion. The defendant appealed [arguing](#) that the trial court abused its discretion by failing to issue a jury instruction on the crashworthiness doctrine and, instead "allowed the jury to hold [it] liable ...based on inapplicable traditional strict liability principles." The Superior Court [agreed](#) finding that the trial court's refusal to give the requested non-standard Jury Instruction was fatal.

According to the appellate court, a traditional Section 402A claim was inapplicable as that only creates liability for injuries proximately caused by a defect where the defect also causes the accident, and the manner in which plaintiffs tried their case [spoke directly](#) to the crashworthiness doctrine. In failing to give the jury the requested non-standard charge on crashworthiness, the trial court [abdicated](#) its duty to instruct the jury on the correct legal principles applicable to the facts presented at trial. Failing to give the non-standard charge was error and an [outsourcing](#) of the trial court's discretion to a "secondary legal source" that is "not conclusive, but merely a guide." Accordingly, the jury verdict was vacated and the case remanded for a new trial.

This decision is significant not only because it confirms that a jury should be given a crashworthiness charge in a crashworthiness case, but also because it signals trial courts not to be overly reliant on the Pennsylvania Suggested Standard Civil Jury Instructions. Trial courts must, therefore, [charge](#) on the applicable law even if it involves giving a non-standard charge.

By: [Bill Schaefer](#), Zurich Staff Legal

## Calculating damages: *Supreme Court clarifies the collateral source rule*

In a case of first impression, the Utah Supreme Court issued a ruling in [Gardner v. Norman](#), clarifying whether the collateral source rule excludes evidence of negotiated medical bills when calculating special damages. The court [held](#) that negotiated medical bills fall outside of the collateral source rule and therefore are admissible for calculation of damages.

As proof of damages in a rear-end auto collision, the plaintiff offered a medical bill for an emergency room visit and eye exam in the amount of \$7,175.77 and \$92 respectively. Plaintiff's health insurance, which had a pre-existing contracted rate with the provider, paid \$4,395.75 for the emergency room visit and \$92 for the eye exam satisfying the entirety of the bills.

At the onset, the *Gardner* court [stressed](#) that the purpose of damages is to make plaintiffs whole by placing them where they were before the damages incurred. Special damages are a form of compensatory damages which are calculated from sums certain. Past medical care evidence must reflect an amount that is "[reasonable and necessary](#)." These damages cover the actual harm suffered; not what might have been suffered.

The court turned next to the collateral source rule and its purpose. Namely, the [rule](#) is to ensure tortfeasors do not benefit from a minimization of damages for which they are liable because those damages are "reduced by proof that the plaintiff has received or will receive compensation or indemnity for the loss from an independent collateral source." The court explained there are evidentiary and damages aspects to the rule. The evidentiary aspect prevents prejudice which arises from an assumption that the plaintiff has already been compensated, thus making the award irrelevant. It also prevents confusion with respect to subrogation rights. The damages aspect of the rule ensures that any windfall goes to the plaintiff victim rather than become a benefit to the tortfeasor. The public policy behind the rule encourages individuals to maintain health insurance.

Plaintiff argued that only gross billed amounts should be used to calculate special damages for past medical care and that the actual bill should be excluded under the collateral source rule as it would be the "reasonable and necessary" value of the medical treatment. Defendant countered that the actual paid amounts were not excluded by the collateral source but rather that the rule precluded evidence of the identity of the third-party entity which made the payment.

Looking to other jurisdictions, the court analyzed three separate approaches to resolve the question presented:

1. Modifying the collateral source rule to allow evidence of negotiated bills;
2. Admitting of both gross and negotiated bills as evidence of reasonable and necessary amounts; and,
3. Precluding recovery of the gross amount by either excluding evidence or reducing damages post-verdict

In 2011, the third approach was adopted by the California Supreme Court in [Howell v. Hamilton Meats & Provisions, Inc.](#), holding that the reasonable value of past medical care could exceed the amount actually paid. Neither the plaintiff nor defendant were liable for the gross billing since the health insurer had already pre-negotiated the rates and paid them accordingly. In this context, the negotiated portions of the rate did not qualify as a collateral payment. The California court [stated](#), "Certainly, the collateral source rule should not extend so far as to permit recovery for sums neither the plaintiff nor any collateral source will ever be obligated to pay."

Finding this reasoning persuasive, the Utah Supreme Court applied it, finding that no party had an obligation to pay the difference between the billed and negotiated values; thus, the collateral source rule did not apply, and the actual paid amount should be used to calculate special damages. The court reiterated that compensatory damages should generally place a person in the position existing before the harm rather than create a windfall.

Finally, the court [clarified](#) that this ruling does not change the collateral source rule and does not apply in medical malpractice cases governed by a different statute. Given the difference in billed versus paid amounts, the court acknowledged that there may be varying levels of application of the rule, depending upon whether a particular plaintiff maintains health insurance. While this may assist in limiting [phantom damages](#), the court did not discuss medical damages for unpaid bills and future medical expenses.

In response to the Utah Supreme Court's ruling in this case, trial attorney groups prompted the proposal of [SB0211](#), which makes all negotiated or reduced bills inadmissible and unusable for calculation of damages. The bill specifically states that any payments from a third-party including any adjusted billing cannot be used as evidence for any purpose including offsets or reduction in settlement offers. According to the bill, the jury may not speculate on the existence of any other liens or payments. The bill did not progress and as the legislature is adjourned until next year, is effectively set aside. As such, the Utah Supreme Court's ruling remains in effect and preserves the intent to provide a more accurate calculation of damages.

By: [Mahima Raghav](#), Zurich CJLA

# Trending topics

## Combatting fraud: *Civil use of the Racketeer Influence and Corrupt Organizations Act*

Because the Racketeer Influence and Corrupt Organizations Act ([RICO](#)) is part of the [Organized Crime Control Act of 1970](#), it is often associated with the “Mafia” or other famous crime syndicates. What is less known is that RICO has civil as well as criminal applications. The civil side of RICO has been the basis for multiple suits throughout the country which allege that some plaintiff attorneys, doctors, and other bad actors should be liable to the companies, carriers or groups they may have conspired to defraud. RICO requires certain [elements](#), such as an “enterprise,” “involvement in a racketeering activity,” and a connection between the two before a violation of the statute occurs. These requirements exist in both the civil and criminal applications. [Civil penalties](#) include payment of treble damages and attorneys’ fees. Very strong evidence and investigation over a long period of time are hallmarks of civil RICO actions. Here are a few examples.

In 2014, after successfully meeting the RICO requirements, a [transportation company](#) concluded its RICO suit against two attorneys and a radiologist who had conspired to bring fraudulent asbestos litigation against it. The matter had gone to trial, with the jury awarding the company \$429,000. As a result of this [model](#) use of RICO, the transporter was ultimately awarded \$7.3 million, which included treble damages and attorneys’ fees.

Attempting to share in this success, on October 16, 2023, a carrier filed a RICO action in the U.S. District Court for the Eastern District of New York, [claiming](#) that some medical providers and corporations had submitted “fraudulent and unlawful no-fault insurance charges.” The medical services provided were allegedly “not medically necessary” and “exaggerated” as well. The case ended without public disclosure of the terms.

Recently, in New York City alone, [dozens](#) of RICO cases were filed based mainly on allegedly fraudulent construction and motor vehicle accidents. For example, a reinsurer and its agent levied their own RICO [allegations](#) on March 1, 2024, this time against not only medical providers and facilities but also choice plaintiff attorneys, purported runners, and allegedly fake OSHA trainers among others. Their complaint asserted that a fraudulent enterprise existed amongst these persons and entities which used the New York Labor Law and workers’ compensation system to set up personal injury cases “designed to capitalize upon the false narratives” which resulted in their loss of millions of dollars. The same plaintiffs filed [another](#) RICO action in early 2025 against different lawyers and individuals citing multiple examples of purported fraud. On September 16, 2025, the initial action was [dismissed with prejudice](#) as the court stated the reinsurer and its agent lacked standing under the RICO statute since it had not incurred damages as required under the statute. Based upon this decision, the [later action](#) was also dismissed with prejudice on February 18, 2026. The remaining cases involve different plaintiffs and to date are still active. Very recently, one New York federal court [agreed](#) that an insurer appropriately laid out a RICO claim in its initial pleading noting that this ruling does not guarantee success on the merits.

But New York City isn’t the only place where these suits have been filed.

In March 2025, a plastics manufacturer’s RICO claims against a plaintiffs’ firm which had repeatedly sued it in asbestos litigation were [dismissed](#) by an Illinois federal judge as the enterprise requirement was not established. Despite the dismissal, the manufacturer [amended its complaint](#) and revived the suit, adding another plaintiffs’ firm as a defendant. In January 2026, that same manufacturer filed yet [another action](#) against a third firm alleging the asbestos cases were part of an enterprise to defraud it. All of this litigation is based on hundreds of cases brought against the manufacturer alleging that its product caused asbestos exposure that injured people.

On January 26, 2026, a [global coal company](#) was successful in convincing an Alabama federal jury to hold a plaintiffs' attorney and others liable under RICO and other theories for filing unfounded lawsuits. The jury award was [\\$120 million](#), which does not yet reflect the treble damages expected to be added. In early March, another carrier filed a RICO claim in Texas, asserting that 20 defendants "[sidestepped](#)" preauthorization requirements and inflated claims amounting to about \$26 million.

Probably most well-known of these claims, Uber has filed RICO cases in [New York](#), [Florida](#), [California](#), and [Pennsylvania](#). Those four cases note that the defendants' actions harm not only Uber but the "[broader public](#)" as well. Each of the cases share similarities, but there are striking differences.

### New York

The [first](#) of Uber's RICO claims was filed in January of 2025, naming several of the same New York City attorneys and medical providers previously sued. The [complaint](#) alleges a conspiracy to exploit the system with medically unnecessary or causally unconnected treatments, which include surgeries. It further asserts that the point of the surgeries and the treatment was to create false medical documentation and testimony that would increase the value of each case. In addition to the RICO claim, Uber seeks [equitable relief](#) to remediate the allegedly fraudulent activity and prevent it from occurring in the future. Within this complaint, Uber also claims that various personal injury plaintiff attorneys referred their clients to a particular program of medical care that involved the defendant doctors. Moreover, Uber contends that these attorneys paid the medical providers either directly or indirectly for the [false treatment](#) and reports of injury. These providers presumably charged and received more excessive rates than their counterparts would legitimately have charged. The complaint additionally lays out the false claims of four personal injury plaintiffs with photographs and social media information suggesting that their claims were unfounded.

### Florida

This lawsuit, [filed in the Southern District of Florida](#), asserts among other things that five rideshare drivers staged separate accidents, after which body shops became involved, "manufacturing damage" which was non-existent immediately after the accident as evidenced by photographs. To support the allegedly fraudulent claims further, the passengers and drivers went to a [specific Medical Center](#) where they were treated on an "emergent" basis. The medical treatment was purportedly coordinated by one particular [Law Group](#), listed as a payor on certain health insurance claims forms. Notably, defendant drivers used the Uber application to report the incident as part of the scheme. The plaintiffs then received physical therapy which allegedly was [fraudulent and medically unnecessary](#). In addition to the physical therapy, steroid injections and other types of medical treatment were allegedly provided by [specific providers](#) as part of the scheme. Plaintiffs then demanded policy limits of \$1 million per person of Uber. The complaint describes the [systematic and widespread web](#) of actors working in concert for monetary gain. In some instances, the driver of one car was allegedly involved in a different staged accident altogether. Uber claims to have suffered [injury](#) of several million dollars as a result of defending costs and paying settlements.

### California

Citing increasing insurance rates and transportation costs as the result of fraud, Uber notes that in Los Angeles County, approximately [45%](#) of each fare goes to insurance costs. This RICO [action](#) alleges that attorneys and medical providers entered into "[side agreements](#)" for the latter to inflate medical bills in exchange for the lawyers sending them "patients" upon whom they performed unnecessary or unrelated treatment. These providers presumably then issued [fraudulent](#) reports to support their treatment and hence the plaintiffs' lawsuits. This scheme allegedly increases the value of the case, which in turn costs Uber and its patrons more money. California [mandates](#) that rideshare companies carry policies of \$1 million in liability, in addition to its UM/UIM coverage, making them targets for claims as well as [billboard attorney advertising](#). Because of these high limits, Uber also alleged that the lawyers "[directed](#)" the plaintiffs' medical care and authorized additional procedures as demonstrated in documents imbedded within the complaint.

## Pennsylvania

Alleging a “[fabrication of fraudulent personal injury claims](#)” which increases insurance rates and transportation costs for the public at large, Uber’s Philadelphia-based [complaint](#) pinpoints one attorney and his firm as well as medical providers and their offices with ties to them. Uber asserts that their scheme of fraudulent claims “harms not only riders but the drivers who make a livelihood” as well as the persons who ride share. The [focus](#) is on false records of medical treatment and exaggerated injury stated. Additionally, the law firm “[instructs](#)” doctors as to the care and procedures for these plaintiffs. The use of only specific providers who diagnose “non-existent serious injuries that develop the need for a life care plan” allegedly leads to higher verdicts and settlements. Within the complaint, Uber cites a previous [federal court opinion](#) reprimanding this same firm for its conduct as part of the evidence of intent and enterprise.

RICO suits are nothing new, but they may just prove to be a very effective tool in combatting fraud and legal system abuse.

By: [Lisa M. Bellino](#), Zurich CJLA

# Trending topics

## The court's artificial intelligence experiment: *Identifying risks and responses*

Efficiency and consistency may make artificial intelligence (AI) an attractive tool for adoption by courts to manage growing dockets and determine just outcomes. However, there are challenges which affect judicial systems around the world. Courts experimenting with this new technology have begun to grapple with its potential pitfalls highlighting that successful use of AI requires human vigilance to vet systems, remove bias, and provide ongoing oversight of AI systems.

### Experimenting with AI

Court systems face great administrative challenges in processing cases from filing through final adjudication. Individual judges face pressure to handle their dockets efficiently and fairly. Traditionally, law clerks and staff are tasked with sorting through documents and assisting with research for cases. For more evidence-intensive cases, the judge and clerks may take [several months](#) to review the record and render a decision. However, judges are increasingly turning to AI's ability to process existing courtroom activities within minutes. Some examples include:

- **Transcription:** converting oration into real time text, which was a function originally reserved for human court reporters. These tools often include additional features to summarize and catalogue e-discovery, such as found in [Teres ai](#).
- **Translation:** Indian courts have implemented the [SUVAS](#) system that translates court filings to English and other local dialects or languages to ensure the parties understand court decisions.
- **Document management, research, and drafting:** In August of 2025, the Michigan Supreme Court [announced](#) a partnership with [Learned Hand ai](#) to assist with document review, summary, and document drafting. The program promises to be built especially for courts by operating in a closed system that avoids hallucinations, remains confidential, and leaves the final decision to the judge.
- **Multiple integrated systems:** Brazil has [adopted](#) several AI systems involving many AI assisted programs that assist with administration, evidence review and management, legal research, drafting support and decision-making support. In the criminal area, Brazil has deployed facial recognition software, smart surveillance, review of testimony, and penalty calculators for prosecutors.

Spurred on partly by the COVID pandemic, the Chinese government has taken a [methodical approach](#) to digitizing courts. China is unique in creating the pilot courts with a digitally based design from beginning to end rather than incorporating a program into previously analog court. At first the courts ran pilot programs in limited jurisdictions. The service of documents, evidence management, and even mediation all are conducted [online](#). The digital courts were said to have cut [cycle time](#) of cases by more than half (to about 42 days) and hearing time by a quarter (to about 29 minutes) as compared to brick-and-mortar courts. Efforts to grow digitization have [continued](#) beyond the pilot as 37% of all hearings in 2022 were conducted online. The digital court infrastructure has lent itself to the implementation of big data analysis and insights to create [China's Intelligent Adjudication System](#) that uses sophisticated AI integration for judicial decision-making. The [Smart Court system](#), for example, predicts the potential award in a case to equip the parties with information and to assist with mediation.

AI purportedly addresses not only efficiency but also provides more objective and consistent rulings. For example, the "[Hungry Judge](#)" effect refers to a study in which judges were found to be more lenient after a meal. And in another study termed "[Refugee Roulette](#)" one judge granted asylum to 5% of applicants while another granted it to 88%. [Proponents](#) of AI cite these examples of human inconsistency demonstrating the value of a standardized system that is not easily influenced by distractions.

### Identifying pitfalls and risks

Recently, Senator Chuck Grassley (R-Iowa), Chairman of the US Senate Judiciary Committee, [admonished](#) two US federal circuit judges whose orders were found to rely on hallucinated caselaw and fictitious evidence summaries from parties not in the case. Both judges cited law clerks as the source of the errors but were ultimately held responsible for the failure in checking the documents before final publication. Senator Grassley further noted that but for the vigilant lawyers in the case who found the mistakes, the erroneous orders could have been missed altogether. AI is prone to undesirable outputs and errors but operate much faster and with the air of validity due to “[automation bias](#).”

The American Association for the Advancement of Science ([AAAS](#)) and the Center for Security and Emerging Technology ([CSET](#)) have both published guides specifically for judges to aid them in understanding the intricacies of AI. For example, the [guides](#) provide explanations different than the types of programs considered AI and how they function. Additionally, they warn courts of potential for misuse and bias. The following are some examples from AI systems where issues have been discovered:

- **COMPAS (USA):** A predictive algorithm used by American judges for bail and sentencing that incorporated analysis on flight risk and recidivism. [Investigations](#) revealed significant racial bias wherein the system generated “false positives” for people of color (labeling them high-risk when they were not) and “false negatives.”
- **The Robodebt Scandal (Australia):** An [automated debt recovery](#) system that used flawed data that eventually targeted recipients of welfare benefits. The bias was eventually found but after targeted individual suffered harm. The example demonstrated the difficulty in finding biased results and then remedying the issues. Commentators have stated that AI bias is more difficult to resolve than the human “hungry judge” bias.
- **GPT-3 Anti-Muslim Bias:** ChatGPT has become a ubiquitous AI tool that relies on the internet as its source of data. Stanford researchers [demonstrated](#) that a bias on the internet may be reproduced in outputs and discovered Islamophobic outputs from the large language model. This example demonstrates the “Garbage In, Garbage Out” (GIGO) risk.
- **Australian Speed Limit Study:** In an experiment, computer programmers were asked to write code for enforcing speeding laws. The programmers interpreted the laws differently, which resulted in different results. The example [illustrated](#) that legal subtleties are not easily translated into algorithms.

Although bias and error may be human traits, AI is built specifically to address efficiency. However, there is [potential danger](#) in hasty implementation such as amplification of bias, errors, misuse, and unintended consequences.

Emotional intelligence, such as interpretation of human responses, is part of judicial decision making but difficult for machine processing. When presenting AI with the scenarios based on the classic “[trolley experiment](#),” these [experimental questions](#), which set up morally ambiguous choices to test how a subject will reason through decisions, produce some difficulty for AI.

Because AI systems are largely influenced by the data set used to train them plus the algorithms that form the basis for program, some programs may issue [undesirable results without insights](#) from experienced legal practitioners. For example, a [controversy](#) involving the American Law Institute’s *Restatement* publications (meant to be simplified a guide for legal reference) has been [criticized](#) for the going beyond mere recitation of rules and forming “aspirational” standards that do not accurately state the actual law, such as found in the *Restatement on Liability Insurance*. [Similar backlash](#) has occurred in other topics such as *Restatement on Copyright* where [mass resignation and condemnation](#) followed publication. If an AI program is trained to consider these publications as a primary source or definite guide on rules, would the outputs then reflect a skewed interpretation of the law? How would the parties know? Should the program consider the *Restatements* as a secondary source? Should the *Restatements* be considered at all? The training data and algorithm are vital to answering these questions and then evaluating a computer-generated analysis. This example also demonstrates the need for transparency of the methodology used by the program for the parties to check conclusions.

Finally, AI systems may add to some [gamesmanship](#) as lawyers continue to strategize ways to obtain optimal results. For example, some existing products purport to [predict](#) a judge's likelihood to rule a certain way. The practice of [forum shopping](#) is widely known as the plaintiff selecting a particular court to file their case seeking an advantage with the judge or jury pool. AI predicted judicial behavior could lead to maneuvers similar to forum shopping with each party looking for any advantage in a case.

These are but a few of the real and conceptual issues that have been identified with the implementation AI technologies. Each of the problems above are multiplied if the court or judge is not transparent in the usage of the AI used in the process. Thus, the consensus among the vast majority of judicial guidance on the topics cautions judges against becoming overly reliant on any system without implementation of human judgment, transparency, oversight, and vigilance against bias.

### **Regulatory & Ethical Response**

As judges are facing questions about AI in their courtrooms as there is no one standard for judges to follow, existing guides have centered around considering key issues. The Federal Judicial Committee has provided a [comprehensive guide](#) for judges when considering the rules of evidence and constitutional arguments. It assists in understanding the technology including the limitations of AI, [noting](#) "AI predicts; it does not conclude."

Further, at The Sedona Conference of Judges, a panel of jurists also issued [guidance](#) centered on responsibility for court publications. Protecting data privacy, checking documents for hallucinations, using appropriate discretion in using AI, and avoiding "automation bias" or assuming AI responses are reliable were key items. In its [Rules of Court](#), California specifically outlines the judge's responsibilities in using AI, requiring judges to protect private data, prevent discrimination or bias, check the output for accuracy, and consider revealing AI usage to the public.

The [National Center for State Courts](#) has also issued guidance to state court systems and judges on how to implement AI while considering its pitfalls. The guide discusses maintaining data privacy, vetting AI vendors, and keeping human insight in all parts of the process, while giving practical guidance on implementation. Since AI is global, UNESCO has also made recommendations for [international standards](#) to courts and tribunals to focus on ethical use of technology. It presents an overview of the technology but also offers guidance on preventing politicized influence into the systems which might undermine fundamental rights.

All guidance recommends human vigilance is a necessary component of implementing AI starting with responsible training and coding of the models, proper implementation, and finally validating outputs. Ultimately, while AI may be a sophisticated tool, the final arbiter remains the human-led institution of law.

By: [Mahima Raghav](#), Zurich CJLA

# Trials & tribulations

## The little things make all the difference: *Persistence pays off*

During its 2024 session, Louisiana's legislature enacted a number of various tort reforms which affect how cases are handled. One of these new laws [limited](#) the right of direct action against an insurer, which has been a topic of much discussion amongst the Louisiana defense bar. Up until the new statute was enacted in 2024, a plaintiff could sue a tortfeasor as well as the carrier which insured it. Moreover, a jury was permitted to know this insurance information when it made its deliberations. When this new statute took effect, the letter of the law clearly spelled out that an insurance company could no longer be named in the caption of a lawsuit and that a jury was not permitted to know that the tortfeasor was insured or who the insurance carrier was.

However, since the statute was silent on the contents of a plaintiff's petition, many new filings simply named the insurance company within the lawsuit, leaving it out of the caption.

This issue came to light in [Triche v. E S & H, Inc.](#), a case which involved a Zurich American Insurance Company (ZAIC)-insured vehicle involved in an accident. Plaintiff's counsel filed suit and appropriately omitted ZAIC from the caption of the petition, but then listed and discussed ZAIC within the body of the document. Specifically, the plaintiff's petition noted that ZAIC was the insurance carrier that would afford coverage for this particular incident. Because pleadings such as the plaintiff's petition can ultimately go into the jury deliberation room when a case goes to trial, the fact that this information was within the petition was troublesome. Quite frankly, if the carrier cannot be a party and cannot be mentioned to the jury, then what would the purpose be of naming the carrier within the body of the petition other than to potentially taint the jury?

This issue had not been raised or resolved by the Louisiana appellate courts, so technically, plaintiffs could continue this practice until new law was made. In fact, the trial courts varied in opinion as to whether it was permitted or not. This tactic and the split of courts on the issue were precisely the basis for filing a motion with the court to strike reference to ZAIC within the *Triche* petition.

The trial court denied the defendant's motion to strike ZAIC from the petition, permitting plaintiffs' version to stand. Knowing that this was an important issue, an immediate writ was filed with the appellate court, seeking a review of the trial court's denial of the motion. At that level, the appellate court denied the writ and agreed with the trial court. This meant that the trial court's denial of the request to strike ZAIC from the pleading was still the law of the case. Thus, a writ to the Louisiana Supreme Court was the next step.

Interesting to note is that while the *Triche* judge in the 24th Judicial District denied the petition to strike, a different judge within the very same judicial district, struck the language in another case. This disparity in outcomes, was a good reason to have an appellate court hear the issue. A uniform interpretation and application of the rule would avoid this.

Another point the trial court made was that the defendant could file a motion *in limine*, closer to trial to resolve this issue. There was no guarantee such a motion would be granted but even further, if the motion were denied, an appeal would need to be taken from that as well. If the jury were to see the petition or hear of its contents, that would be yet another basis for appeal. The simpler, more cost-effective manner of dealing with the issue was to make the outcome clear from the onset of the litigation.

Furthermore, removing the carrier from the petition assists in streamlining the litigation. Not needing to file multiple motions regarding this issue throughout the litigation or later an appeal, speeds up the process. It allows for easier resolution of the case and better analysis of risk factors going into trial. It saves the court time and resources as well as the parties.

Most importantly, the intent of the [statute](#) is that the jury never know about insurance: an insurer is not to be in the caption and the court should not tell the jury about any insurance coverage. The defendant's position would guarantee that. The plaintiff's petition leaves open that back door of slipping in evidence of insurance through the petition.

These arguments were made before the Supreme Court of Louisiana. Because the statute is relatively new, no other cases had decided this issue. This was a case of first impression before the Supreme Court of the state and its outcome would pave the way for all practitioners. Likewise, the decision might keep verdicts down if jurors didn't know about insurance.

On February 10, 2026, the Louisiana Supreme Court published its decision, granting the defendant's request to keep insurance from the jury. The high court required that insurance information "shall be redacted" in the event the plaintiff's petition is ever published to the jury. This judicial decision is a modification of the law clarifies the direct action statute and prevents plaintiffs from using this tactic.

What may have seemed like a small point to make will have rippling effects. Other carriers and counsel are already using this decision to stop plaintiffs from adding insurance into their cases. The outcome demonstrates that taking a stand on an issue such as this is not only important, but impactful. Persistence paid off here and will continue to do so.

By: Forrest Willoz, Zurich Staff Legal

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